



An
Bord
Pleanála

Inspector's Report

ABP-312940-22

Development	Point of detail - Condition number 12 attached to PL 01.228507 (198 dwellings, creche and associates site works)
Location	Tullow Road, Carlow
Planning Authority	Carlow County Council
Planning Authority Reg. Ref.	061177
Applicant(s)	Milltown New Homes Ltd.
Type of Application	Referral of Point of Detail
Referred By	Milltown New Homes Ltd.
Observer(s)	None
Date of Site Inspection	24 th April 2023
Inspector	Una O'Neill

Contents

1.0 Introduction.....	3
2.0 Site Location and Description	3
3.0 Background to the Referral.....	3
4.0 Statutory Provision and Policy Context.....	5
4.1. Planning and Development Act, 2000, as amended	5
4.2. National Guidance.....	5
4.3. Local Policy	6
5.0 The Referral.....	6
5.1. Referrer’s Case	6
5.2. Planning Authority Response (dated 5 th June 2020)	8
5.3. Referrers Response to PA (letter dated 13 th July 2020).....	9
5.4. Further Responses.....	9
6.0 Planning History.....	13
7.0 Appropriate Assessment.....	14
8.0 EIA Screening.....	14
9.0 Assessment.....	14
9.1. Background.....	14
9.2. Questions Referred	15
10.0 Recommendation	19
11.0 Reasons and Considerations	19

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.
- 1.2. The Board under planning reference ABP-307037-20 determined the dispute under a point of detail application relating to condition 12, on 24th April 2021. However, the decision of the Board was quashed by Order of the High Court on 25th January 2022 and remitted back to An Bord Pleanala, who determined on 11th March 2022 that upon completion of a Section 131 process that a de novo assessment be undertaken. The de novo assessment is set out hereunder under planning reference ABP-312940-22.

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 west of the N80, County Carlow.

3.0 Background to the Referral

- 3.1. The Board granted planning permission under PL01.228507, on the 21st of November 2008, for 175 houses (revisions submitted with the appeal submission by the applicant reduced number of houses sought from 198 to 193 with creche omitted; Board decision omitted a further 18 houses) at Tullow Road, Carlow, County Carlow. 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.

- 3.2. There were two extensions of durations permitted in relation to the permitted 2008 development, with the expiry to be 31st December 2021, pursuant to Planning Ref. No. 18/440. The development was under construction in April 2020.
- 3.3. The Board was requested on 3rd April 2020, under ABP-307037-21, by the applicant to assess a point of detail in relation to Condition 12 under ref ABP-307037-20. The Board determined as follows:
 - (a) 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 PL 01.228507.
 - (b) 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 PL 01.228507.
 - (c) 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 granted under PL 01.228507.

(d) 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 PL 01.228507.

(e) When considering matters referred to it for determination under section 34(5) of the 2000 Act, 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 2000 Act.

3.4. The High Court subsequently quashed the decision under ABP-307037-20 and remitted the case back to ABP for decision.

4.0 **Statutory Provision and Policy Context**

4.1. **Planning and Development Act, 2000, as amended**

Section 34(5) of the Act states the following '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'.

4.2. **National Guidance**

The 'Development Contributions, Guidelines for Planning Authorities' published by the Department of the Environment, Community and Local Government in January, 2013 aim to provide non-statutory guidance on the drawing up of development

contributions to reflect the radical economic changes that have impacted across all sectors since guidance was last issued in 2007.

4.3. Local Policy

- Carlow County Council Development Contribution Scheme 2003(1) and (2) – see attached.
- Carlow County Council Development Plan 2003, Map no. 3 Carlow Town Environs LAP, amended December 2005 is the relevant map – see attached.

5.0 The Referral

5.1. Referrer's Case

The referrers application was received on 3rd April 2020. The submitted letter, dated 30th March 2020, is summarised as follows:

- The permission was granted under PL01.228507 (21st November 2008) 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, under reg ref 13/296 and subsequently under reg ref 18/440. The development had commenced by April 2020.
- The applicable contribution scheme was the Carlow County Council Development Contribution Scheme 2003 and in 2008 the planning authority sought contributions as follows.

Water	247,427 euro
Wastewater	329,905 euro
Special Levy Water	175,000 euro
Special Levy Wastewater	175,000 euro
Roads	113,405 euro
Community Recreation	82,476 euro

Landuse Levy	443,522 euro
Special Flooding Levy	40,000 euro

- 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’ contributions in respect of water, waste water and flooding are ‘special’ and as such are not in accordance with condition 12.
- 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.
- A land use levy (charged at €443,522) is included. The scheme provides for a per acre charge. The council has applied this and also special levies in respect of infrastructural works.
- The per acre scheme is not in accordance with the Act which provides that contributions should be paid in respect of the different classes of public infrastructure and facilities. The per acre scheme cannot be used to apply special contributions.
- The indexation provision is outside the scope and provision of Section 48 of the Act.

5.2. Planning Authority Response (dated 5th June 2020)

- The Board imposed condition 12 under PL01.228507 requiring the payment of a development contribution.
- Carlow County Council's (CCC) Development Contribution Scheme 2003 is in accordance with Section 48 of the Planning and Development Act 2000, as amended. Development Contributions were also applied in accordance with Section 48(2) of the Act.
- The contributions applied are in accordance with Condition 12.
- In relation to special contributions of Water, Wastewater and Flooding, these are in accordance with Section 48(2) of the Act.
- 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 addition 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.

5.3. Referrers Response to PA (letter dated 13th July 2020)

- Condition 12 was applied in accordance with Section 48.
- Section 48(2)(c) makes provision for special contributions. These are not part of the Contributions 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 is 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.

5.4. Further Responses

Following responses received following the serving of a notice under Section 131 to the referrer and Carlow County Council, which included a copy of the High Court Order quashing a previous decision and request for further observations.

5.4.1. Response of PA (letter dated 25th April 2022)

- Land Use Levy: ABP has conceded it incorrectly concluded that the Land Use Levy did not apply in this instance and accordingly nothing further arises and the 443,552 euro is due and payable to the Council.

- Special Contributions: The developer (Mr Liam Tedford) agreed to the special contributions of 390,000 euro proposed by Carlow County Council.
- Two extensions of duration have been granted to permission PL01.228507. The latter was granted to Milltown Homes Ltd who acquired the site in recent years.
- On 29th April 2019, Carlow County Council (CCC) entered a contract with Milltown New Homes Ltd. to purchase 63 homes and under special condition 7.2(o) of that contract, Milltown New Homes Ltd did undertake to discharge the development contributions due (390,000 euro) and did in fact pay the Special Contributions due in respect of the first 34 houses.
- Section 34(5) of the Act allows that a point of detail can be referred to the Board where there is a disagreement. It is CCC's contention that there was no default of agreement. The amount to be paid was agreed by the developer Milltown New Homes Ltd and before that by Mr. Liam Tedford. The amount is payable since January 2009 and accordingly Messrs Adrian Doyle and Associates were in error seeking a determination from the Board.
- There is a commercial contract in place which requires Milltown New Homes Ltd to discharge the development contributions due in respect of 63 houses in the development and any dispute in relation to the said contract is a matter of contract law which can only be determined by the courts.
- Referral should be dismissed.
- Enclosed with letter are copies of agreement with Liam Tedford to discharge 390,000 euro Special Levies and contract with Milltown New Homes Ltd, special condition 7.2(o).

5.4.2. **Response of Referrer (letter dated 28th April 2022)**

The submission from Adrian Doyle & Associates on behalf of the referrer is summarised as follows:

- A letter was issued by PA requesting special contributions in respect of water, wastewater, and flooding.
- A charge of €2534.51 per house under the heading of Land Use Levy was included. This charge is applied as a per acre charge on development land and

entitled no. 2 Scheme in the 2003 Contributions Scheme. This scheme applies a per acre charge with no indication or reference to the contribution to the different classes of public infrastructure, as required under Section 48(3)(b) of the Act.

5.4.3. Response of Referrer to PA Response of 25th April (letter dated 8th June 2022)

Adrian Doyle & Co Associates has responded on behalf of the applicant/referrer as follows:

- Carlow Co Co is incorrect in stating that that ABP ‘conceded that it incorrectly concluded that the Lane Use Levy did not apply and accordingly nothing further arises and the 443,522 euro is due and payable to the council’.
- The Board conceded that their conclusion that the Development Contribution Scheme 2003 (No 2) did not apply to the permission was incorrect due to the use of an incorrect map.
- Carlow No 2 scheme, which applies charges on an area (per acre) basis does not comply with the Act. The question of accountability of the local authority in respect of contributions received and expenditure incurred also arises (section 48(14)).
- We submit that the only charges that can be applied, which comply with the Act under the Carlow Development Contributions Scheme, are those that indicate a charge for different classes of infrastructure (as per S48(3)(b) of the Act). The per acre charges as applied under the No. 2 scheme are unlawful.
- There is no previous agreement in place. The applicant is not and never was the developer.
- The Bord is requested to determine that the grant of permission under PL01.228507 did not identify any specific exceptional costs not covered by the CCC development contribution scheme over and above the standard contribution payable under the 2003 contribution scheme and therefore no special contribution towards water, waste water and flooding infrastructure are payable by the developer to the County Council under permission PL01.228507.
- The special contributions applied by the local authority are not in accordance with the terms of the Development Contribution Scheme.

5.4.4. Response of PA to Referrer Response (letter dated 27th May 2022)

The Head of Finance & ICT of Carlow County Council (CCC) has made the following submission on behalf of the Council:

- It is the Council's view that there was no default in agreement exists as per condition 12 and provided for under Section 34(5) of the Act, as there was a written agreement between the County Council and the developer about the contributions. The seeking of a determination from the Board was therefore in error.
- Special Contributions: The Council remains of the view that special levies are due and payable for reasons outlined in the Council's submission dated 25th April 2022, including written statement with the applicant dated 29th January 2009 and contract with the developer dated 24th April 2019. The special levies have been paid in respect of the first 34 units in the development.
- Land Use Levy: The €443,522 Land Use Levy is due and payable and the Board following the judicial review proceedings has conceded that the Land Use Levy applies in this instance. The Land Use Levy has been paid in respect of the first 63 units in the development.
- CCC's pleadings before the high court set out the basis for the application of the €443,522 Land Use Levy in respect of planning reference PL0.1228507/PL06/1177, pursuant to the CCC Development Contribution Scheme.
- The CCC Development Contribution 2003(2) Scheme includes a Land Use Levy on a per acre charge and clearly sets out the relevant different classes of infrastructure in the table of works and estimated costs of €18.5 million included in the scheme entitled 'Infrastructural Works € Dev Cont. Scheme (2)' as highlighted in the attached copy. Messrs Adrian Doyle & Associates are in error in stating that there is 'no indication or reference to the contribution to different classes of infrastructure' in the Council's Development Contribution Scheme.
- Messrs Adrian Doyle & Associates are in error in seeking the Board to determine if the Carlow County Council development contribution 2003(2) is in compliance with Section 48 of the Planning and Development Act 2000, which matter could only be determined by a Court of competent jurisdiction.
- Messrs Adrian Doyle & Associates have made this referral to the Board pursuant to Section 34(5) Planning and Development Act 2000 the subject matter of which

dates back nineteen years post the adoption of the 2003(2) Scheme, eleven years post the development contributions were agreed with Mr Liam Tedford the person the permission was granted and post the execution of the Carlow County Council/Milltown New Homes Ltd contract for the purchase of 63 units in the development.

6.0 Planning History

ABP-307037-20 – Point of Detail case quashed by Order of the High Court (Perfected on the same date), New Case Number ABP-312940-22.

ABP Ref PL01.228507

Permission 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.

Condition 12:

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.

[Due to revisions submitted to the design and layout of the scheme to the PA and ABP and revisions through conditions attached, permission was granted for 175 units].

7.0 Appropriate Assessment

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

8.0 EIA Screening

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

9.0 Assessment

9.1. Background

9.1.1. Section 34(5) states that conditions imposed under subsection (1) on a grant of permission may provide for 'points of detail' to be agreed between the planning authority and the person carrying out the development. It subsequently provides a mechanism whereby those matters may be referred to the Board for determination should the planning authority and the person carrying out the development fail to reach agreement. The pertinent issue is that the disagreement resulting in the referral to the Board arises from a failure to agree a 'point of detail' derived from a condition of the grant of permission, namely Condition 12 relating to reg ref. PL01.228507.

9.1.2. I note that Carlow County Council disputes at the outset that the referrer is allowed refer the application to the Board given previous letters of agreement with the previous owner of the site and current contract with Milltown New Homes Ltd. It is

the Council 's position that there is no default of agreement on the matter of contributions as per condition 12. The referrer is of the view that the information as presented by the council was misleading, that the agreement was with an agent and not the applicant, and the applicant is not and never was the developer. The referrer's submission states that the applicant was misled and the agreement is outside the scope of condition 12.

- 9.1.3. I have reviewed the council's position and that of the referrer. I am of the view that it is open to the Board to consider the referrer's application in this instance. Implementation of contracts and other agreements outside of the planning condition are outside the remit of the Board. I assess only hereunder the referrer's questions in relation to the application of condition 12 as permitted under PL01.228507.
- 9.1.4. Permission was granted in November 2008 for a development under reg ref PL01.228507 comprising 175 units as amended under appeal (original application was for 198 units, with amendments and conditions omitting units and the creche). The development plan in force was the Carlow County Development Plan 2003. The application site was in the area of the county council in what was deemed to be Carlow Town Environs (but not within the area of the town plan at that time).
- 9.1.5. Carlow County Council states that the Carlow County Council Development Plan 2003, map no. 3 Carlow Environs Local Area Plan Amended December 2005 is the relevant development plan map to consider in conjunction with the Development Contribution Scheme 2003, which was then in place. This does not appear to be disputed by the referrer. I attach the relevant map and copy of the contribution scheme to this report.
- 9.1.6. I have reviewed the documentation available and accept the Development Contribution Scheme 2003 map no. 3 Carlow Environs Local Area Plan Amended December 2005 is the applicable map (distinct from the town council maps).
- 9.1.7. In examining the Development Contribution Scheme (DCS) 2003, I note section (1) and section (2) apply, as the site (in accordance with the relevant map 3) is within the Carlow Environs LAP area.

9.2. **Questions Referred**

- 9.2.1. The questions referred by the developer can be summarised as follows:

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

9.2.2. In relation to the issue of special contributions, Section 48(2)(c) of the Planning and Development Act 2000 as amended states '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'.

9.2.3. 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 state 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.

9.2.4. A standard development contribution condition under Section 48 of the Act (condition 12) was attached to the permission granted by ABP. No provision for a special development contribution under Section 48(2)(c) of the Act was attached. 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 under Section 48(2)(c) may be levied on the developer on foot of the grant of permission under PL01.228507.

9.2.5. The applicable contribution scheme was the then 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 under title ‘Dev. Contribution Scheme (1) Countywide’:

	Res/per unit
Water	€1,293.40
Wastewater	€1,724.53
Roads	€592.81
Community/Recreation/Parks/Leisure	Up to 126m2 /€431.13; Next 60m2 /€11.59; €23.17/m2 thereafter.

9.2.6. The contribution scheme also applies the following under title ‘Development Contribution Scheme 2003 (2) NOTE: Carlow LAP Lands Only’. A note is inserted below the table which states ‘...the outlined contributions in Scheme (No.2) are in addition to those included in the Development contribution Scheme for the County of Carlow approved by the Council at the meeting held on 10th April 2003’.

9.2.7. The map referred to above (map no. 3 Carlow Environs Local Area Plan Amended December 2005) shows the site is within the area of the Carlow LAP lands, therefore DCS(2) applies in addition to DCS(1). The additional contribution applicable is as follows:

Land Use	€Cont/Acre
Residential	27,366.21

9.2.8. Further to my assessment above, I respond to the referrer's questions hereunder:

(a) Is there a provision for the payment of a special contribution for water?

9.2.9. 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.

(b) Is there a provision for the payment of a special contribution for wastewater?

9.2.10. 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.

(c) Is there provision for the payment of a special contribution towards flood works?

9.2.11. 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.

(d) Is there a provision for the payment of a land use levy?

I note under the applicable Development Contribution Scheme(2) a per acre Land Use contribution is applicable as per the terms of the development contribution scheme in addition to the contributions under Development Contribution Scheme(1).

Both Scheme(1) and Scheme(2) are applicable to the site. No additional special levies under Scheme(2), in addition to the per acre contribution, are applicable.

(e) Are the charges applicable under (2) of the scheme limited to the per acre charge?

9.2.12. As per the terms of the scheme, Carlow LAP lands must pay a contribution on a per acre basis for residential land use in addition to the countywide scheme. It is clear from the note within the Development Contribution Scheme that Scheme(1) and Scheme(2) applies to the application site.

9.2.13. The referrer raises issue with the per acre basis of application, however, the terms of the Contribution Scheme as adopted at that time by the council is clear and is applicable. 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.

(f) Is indexation outside the provision of section 48 of the Planning and Development Act 2000 as amended?

9.2.14. 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. 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.

10.0 Recommendation

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

11.0 Reasons and Considerations

The Board granted permission for 175 units 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:

- **A) Is there a provision for the payment of a special contribution for water?**

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.

- **B) Is there a provision for the payment of a special contribution for wastewater?**

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.

- **C) Is there provision for the payment of a special contribution towards flood works?**

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.

- **D) Is there a provision for the payment of a land use levy?**

Under the applicable Development Contribution Scheme(2) a per acre Land Use contribution is applicable, in addition to the contributions under Development Contribution Scheme(1). Both Scheme(1) and Scheme(2) are applicable to the site. No additional special levies under Scheme(2), in addition to the per acre contribution, are applicable.

- **E) Is indexation outside the provisions of section 48 of the Planning and Development Act 2000 as amended?**

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

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Una O'Neill
Senior Planning Inspector

27th April 2023