



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314834-22

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<b>Development</b>	Reconstruction and extension of agricultural buildings with associated site works. An EIAR accompanies this application.
<b>Location</b>	Milltownmore, Fethard, Co. Tipperary
<b>Planning Authority</b>	Tipperary County Council
<b>Planning Authority Reg. Ref.</b>	2260121
<b>Applicant(s)</b>	Milltown Composting Systems Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	Financial Condition (s. 48)
<b>Appellant(s)</b>	Milltown Composting Systems Ltd.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	31 <sup>st</sup> July 2022.
<b>Inspector</b>	Peter Nelson

## 1.0 Site Location and Description

- 1.1. The site is located at Milltownmore, approximately 4.8km southwest of Fethard. The site is at the end of a local access road off the L1408 Rathsallagh Road. The site contains an in-vessel composting facility which currently accepts organic fine materials from the treatment of mixed municipal solid waste with smaller amounts of non-hazard industrial and municipal wastewater sludges.

The stated site size is 3.930 hectares and the stated gross floor area of the buildings on site is 9,328 sqm. The gross floor area of the proposed works is 3,650sqm.

## 2.0 Proposed Development

- 2.1. Permission is sought for the reconstruction and extension of the existing agricultural storage structure, including use as an organic material maturation and extension to the existing storage facility. An increase in the allowed intake of organic material from 50,000 to 75,000 tonnes per annum to the processing facility is proposed. Permission is also sought for air-handling bio-filter installation and associated extract and input fans.
- 2.2. An Environmental Impact Assessment (EIAR) was submitted with the application and the proposed development requires a review of the site's EPA Industrial Emission Licence.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Tipperary County Council decided to grant permission for the proposed development on 20<sup>th</sup> September 2022, subject to conditions.
- 3.1.2. Conditions No.7 and 8 are directly relevant to this appeal. They state:

*Condition no.7*

*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 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 €68,513.90 which is calculated as follows:*

<b>Class</b>	<b>Rate 2020 per sq.m</b>	<b>Area sq.m</b>		<b>Total</b>
	€23	3566.16	Permission	€82,021.68
Less contribution associated with former agri sheds that are being redeveloped - €13,507.78				€68,513.90

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

*Condition No. 8*

*Prior to the commencement of development, the developer shall pay to the Planning Authority a financial contribution as a special contribution in accordance with Section 48(2) (c) of the Planning and Development Act 2000 towards the cost of road widening works at junction of the L1409 and L14028-0. The amount of contribution payable in respect of €23,275. The contribution shall be index linked and reflect the developer's equitable share of the capital costs.*

***Reason: It is considered reasonable that the developer should make a special contribution towards the expenditure proposed to be incurred for exceptional (specify type) infrastructure costs associated with and necessitated by the development.***

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

In relation to the application of contributions, the planning report dated 19<sup>th</sup> September 2022 states:

The proposal includes for reconstruction and extension of agricultural storage structures. Said structures have a total floor area of 2,955.96 sq m (measurements taken from PI Ref 19600690). The contribution amount applicable to the existing agri building is €13,507.78 (2,455.96 sq m x €5.50 per sq m, 500 sq m allowance under Section 12 allowed for).

<b>Class</b>	<b>Rate 2020 per sq.m.</b>	<b>Area sq.m</b>		<b>Total</b>
8	€23	3566.16	Permission	€82,021.68
12	€5.50	2,455.96	Permission	€13,507.78

Proposed shed is 3,566.16 sq m.

Contribution difference is €68,513.90.

### 3.2.2. Other Technical Reports

The Clonmel District Engineer's report dated the 16<sup>th</sup> September 2022 stated that with regard to the widening of the access of the road to the east of the junction, the applicant could either carry out the works himself or the Council can do the works. The report stated that the estimated cost of the works would be in the order of €23,275.

### 3.3. Prescribed Bodies

None

## 4.0 Planning History

### 4.1. Relevant planning history includes the following:

**P.A. Ref.: 19600690** Permission was granted on the 8<sup>th</sup> August 2019 for the reconstruction of, and extension to, the existing agricultural storage building and all

necessary site works and services. An agricultural rate for contributions was applied to the extension floor area.

**P.A. Ref.: 14600521** Permission granted on the 16<sup>th</sup> September 2015 to construct an enclosure over the reception yard, relocate communication masts, extend 3no. agricultural amendment stores, incorporating existing staff facilities and associated site works. It is noted that the development was classed as a business premises for development contributions.

## **5.0 Policy Context**

### **5.1. Tipperary County Council Development Contribution Scheme 2020.**

#### 5.1 General Development Contributions

These contribution schemes apply in respect of public infrastructure and facilities provided by or on behalf of the Local Authority that benefit development in the Local Authority's functional area.

#### 5.2 Special Development Contributions

A Planning Authority may, in addition to the terms of a General DCS, 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 the Local Authority in respect of public infrastructure and facilities which directly benefit the proposed development. The Planning Authority must specify in a planning condition attached to the grant of permission, the particular works carried out, or proposed to be carried out, to which the contribution relates.

#### 6.0 Classes of Development

Class 8: The provision of an industrial building or light industrial building (including for non-retail warehousing, processing & manufacturing). Category: Industrial

Class 12: The provision of buildings or other structures for the purposes of traditional agriculture. Category: Agriculture.

## 11.0. Points to Note

### Change of Use Applications or Redevelopment of Buildings

Where a 'change of use' permission is sought and the new use remains in the same class of the DCS (as set out under Section 6.0 above) as the previous authorised class of use, no additional charges shall be levied on the applicant, save in the event of an expansion. Where a new class of use (as per Section 6.0 above) is sought for a property or where redevelopment of a site is proposed, the contributions applicable shall be the difference between the contribution rate applicable to the authorised existing use/floor area and the contribution payable for the proposed use (where greater). 100% of the applicable contributions will be sought on any additional floor area/buildings.

## 12.0 Schedule of Contributions

Class 8:	Per sqm. – Industrial:	€23
Class 12:	Per sqm. – Agriculture:	€5.50

## 5.2. Ministerial Guidelines

### Development Contributions Guidelines for Planning Authorities (2013)

The Guidelines provide guidance on the drawing up of development contributions. Under section 48 of the Act, planning authorities must draw up a development contribution scheme (a general development contribution scheme) 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.

### Development Management Guidelines for Planning Authorities, June 2007

Section 7.12 states:

“‘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.”

### **5.3. National Guidance**

Development Contributions, Guidelines for Planning Authorities 2013

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

A 1st Party appeal has been lodged by the applicants, Milltown Composting Systems Ltd. The applicants are appealing against the development contributions contained in Conditions No.7 and 8 on the following grounds.

- In this instance, the application was for an extension to an existing agricultural structure and its agriculture use.
- The planning fee was for an agriculture structure and accepted by Tipperary County Council.
- The operation is a Composting Facility and part of the process is commercial and is conducted in an area designated as such and under an existing planning permission.

- The process has an agricultural element, and part of the existing facility operates under planning granted for this purpose.
- The proposed storage sheds are intended for the agricultural-only aspects of the enterprise.
- The correct contribution is the total floor area of 3566 sqm less the existing sheds of 2456 sqm, giving a total additional area of 1110 sqm. The contribution scheme discounts the first 200 sqm, leaving 910 sqm liable for a contribution of €5.50/sqm = €5005.
- The applicant negotiated the required consent of an adjoining landowner to facilitate the Council in altering the junction. The Planning Authority did not proceed with this option.
- While the applicant does not own the land required for the proposed road widening, neither does the Council and, therefore, has no certainty of an agreement with the owner.
- It is unreasonable for the Council to demand a contribution for a special purpose with a breakdown of the cost and without any certainty of being able to complete the works.

## 6.2. Planning Authority Response

The main points of the Planning Authority's response can be summarised as follows:

- The development includes the reconstruction and extension of a shed to be used as part of the existing composting facility.
- The shed will be used for maturation as part of the composting process.
- The contributions were applied on the basis of Class 8, which is deemed closest in nature to the proposed development as allowed for in Section 6 of the Contribution Scheme.
- The scheme has been correctly applied, noting the use of the reconstructed and extended sheds as part of the composting enterprise.



- Under declaration S5/15/8, the Planning Authority previously determined that the change of use of the existing sheds on the site from use as slatted cattle sheds to use for storage of composed material was not exempted.
- The widening of the section of roadway east of the junction L14082 and L1408 was included as a proposed mitigation measure in the original EIAR.
- This land was not in the ownership of the applicant.
- Revised proposals for road widening were received as part of the EIAR addendum.
- The District Engineer estimated the cost of the widening works at €23,275.
- The requirement for widening arises from the increased traffic the proposed development will generate.
- The costs are considered reasonable.

### 6.3. Further Response

The response to the comments of the Planning Authority from the applicant can be summarised as follows:

- The application was specifically for an extension to the existing agricultural store for the purpose of organic maturation.
- The Planning Authorities claim that the contribution is deemed closest to the intended use does not take into account the considerable difference in the sums involved.
- The response from the Planning Authority does not directly reference the actual grounds for the appeal.
- The planning fee paid was the agricultural rate, and the decision was for an agricultural development.
- It has been agreed with the District Engineer that the Council would undertake works to ease the junction and that the applicant would reimburse the Local Authority in full for the expenditure.

- The Planning Authority does not own the lands and cannot provide the easement.
- It is unreasonable for the Planning Authority to impose financial contributions for works they cannot execute.

## 7.0 Assessment

7.1. This appeal was made against conditions set under S.48 of the Act. Under Section 139 Act the Board is confined to consideration of whether the financial contributions were correctly applied.

### 7.2. Condition No.7: Section 48 Contribution

The legislation, in this case, provides that the Board, in considering this type of appeal, has to decide whether or not the terms of the Development Contribution Scheme have been properly applied by the Planning Authority in this instance. It cannot enquire into nor determine any issue relating to the rights or wrongs of the Scheme itself. Therefore, the main issue in this case is whether the development contribution scheme has been correctly applied.

7.2.1. The €68,513.90 contribution has been calculated under the Tipperary County Council Development Contribution Scheme 2022 made under Section 48 of the Planning and Development Act. The Planning Authority has applied a contribution on the basis that the use of the reconstructed and extended sheds are part of the composting enterprise and class 8: *'the provision of an industrial or light industrial building*, of the Tipperary County Council Development Contribution Scheme 2022 applies.

7.2.2. The applicant argues that the planning application was for the reconstruction and extension of an existing agricultural storage structure; therefore, a contribution for an agricultural use should apply.

7.2.3. The development on-site operates as an aerobic composting plant with the capacity to accept and process a broad range of compostable organic material, including source-segregated household kitchen waste, catering wastes, non-hazardous industrial and municipal wastewater sludges and organic fines generated in the physical treatment of mixed municipal waste. The proposed reconstructed sheds are

to be used for extended maturation capacity. I note that the planning application fee for the proposed development was for an agricultural use; notwithstanding this, I consider that the maturation of the organic material is part of the overall composting process and cannot be considered as a traditional agricultural use. Therefore, Class 10 of the Tipperary County Council Development Contribution Scheme 2022 does not apply in this instance.

- 7.2.4. The Tipperary County Council Development Contribution Scheme 2022 states that when a use is not specifically listed in the classes of development, the use deemed closest in nature to the proposed development will be applied. Having regard to the 21no. classes of development specified in the Contribution Scheme I consider that as the proposed use of the building is part of the aerobic composting process, then the class of development closest in nature to the proposed development is Class 8, the definition of which is: *'The provision of an industrial or light industrial building (including non-retail warehousing, processing & manufacturing).'*
- 7.2.5. The Tipperary County Council Development Contribution Scheme 2022 states that when a new class of use is sought for a property or where redevelopment of a site is proposed, the contributions applicable shall be the difference between the contribution rate applicable to the authorised existing use/floor area and the contribution payable for the proposed use (where greater). 100% of the applicable contributions will be sought on any additional floor area/buildings. As the existing use of the buildings is for agriculture, the Planning Authority has allowed for a difference in contributions for agricultural building compared to industrial buildings.
- 7.2.6. I note that the Planning Authority have a stated figure for the existing structures as having a total floor area of 2,955.96 sqm. It was stated that the measurement was taken from PI Ref 19600690. I note the stated floor area on the application form and drawings for PI Ref 19600690 was 2160 sqm. On this current application, the existing structures have a stated floor area of 2100 sqm (1050 x 2 as per site layout plan Drawing No. P2). Having measured the existing building as detailed in Drawing No.P2 I agree with the stated figure. Tipperary County Council Development Contribution Scheme 2022 states that for the purposes of traditional agricultural development (excluding stables and kennels), this contribution will be applied where the gross floor area, when measured internally, exceeds 500 square metres. Therefore, I consider that the following calculation should apply.

Class	Rate 2020 per sq.m.	Area sq.m		Total
8 Industrial	€23	Proposed Sheds 3566.16	Permission	€82,021.68
12 Agriculture	€5.50	Existing Sheds 2100sqm – 500sqm = 1600sqm	Permission	€8,800

Contribution difference is €73,221.68.

It is, therefore, my opinion that the planning authority was correct in attaching a Section 48 Development Contribution to this grant of permission; however, the figures were not calculated on the stated existing floor areas. I therefore consider that the condition should be amended to include the correct contribution figure.

### 7.3. Condition no.8. Road Improvements.

7.3.1. The €23,275 contribution is 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

7.3.2. The Development Management Guidelines address such conditions as follows (section 7.12):

*'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.*

- 7.3.3. As discussed above, the proposed development was subject to a contribution in accordance with the Tipperary County Council Development Scheme 2020 made under Section 48 of the Planning and development Act 2000 (as amended). The Scheme states that 82% of the monies will go to infrastructure schemes as identified in the Appendix: Infrastructure & Facilities Work Programme 2020-2025. The site is located in the Clonmel Borough District and the provision of road improvements works are included in this work programme.
- 7.3.4. In accordance with section 48(2)(c), the Planning Authority may, in addition to the terms of a General Development Contribution 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 the Local Authority in respect of public infrastructure and facilities which directly benefit the proposed development.
- 7.3.5. The local authority states that widening the roadway east of the junction L14082 and L1408 was proposed as part of the mitigation measures in the original EIAR. A revised proposal relating to the road widening was submitted as part of the EIAR Addendum. The revised drawings show the widening of the junction by approximately 24 sq.m into the existing grass verge and retaining the existing fences and hedgerow boundaries. The proposed development is to increase the tonnage throughput in the composting facility from the existing 50,000 tonnes per annum to 75,000 tonnes per annum. The EIAR states that the proposed development will result in a modest increase in all vehicles during peak hour movements, and to control and reduce the potential impact on receptors from traffic related to the proposed development several mitigation measures were proposed. These include the widening works to the east of the junction of the L1409 and L1 4028-0, which will allow for a range of vehicles to safely travel through the junction even when opposing vehicles may meet at the junction. I note that the junction is serving a cul-de-sac, which serves only four other properties, I therefore considered that the proposed benefit deriving from the junction widening will not be widespread.

- 7.3.6. With regard to the above, I consider that the proposed junction widening is in respect of the development and is specifically required to facilitate the increased movement of traffic due to the planned increase in the allowed intake of organic material from 50,000 to 75,000 tonnes.
- 7.3.7. In his report dated the 16th September 2022, the District Engineer states that the applicant can undertake the work or the Council can undertake the same.
- 7.3.8. The Planning Report dated 19<sup>th</sup> September 2022 recommended that a special contribution be required to allow the Council to undertake the works as the applicant does not own the lands on which the work is proposed. The District Engineer has estimated the cost of the works to be €23,275. The Local Authority has supplied no breakdown of the costs.
- 7.3.9. The applicant states that following a request from the Planning Authority, he agreed to negotiate the required consent of an adjoining landowner to facilitate the County Council in altering the junction. The applicant also states that he has the landowner's consent to cede the land area and had agreed with the Local Authority Engineer that the Council would undertake the works and that the applicant would reimburse the Local Authority in full for the expenditure. The applicant also considers that the Local Authority is not in a position to carry out the works as they do own the land in question. I note that while the applicant states that they have the agreement of the landholder to carry out the works, the applicant also does not own the land. I also note that the land take required is outside the existing boundary, which is to be retained.
- 7.3.10. With regard to the cost of the works the Local Authority has estimated the cost of the works to be €23,275. Section 7.12 of the Development Management Guidelines outlines that for a special contribution condition to be attached by a planning authority, the basis for the calculation of a contribution must be explained in the planning decision, including identifying the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. The basis for the calculation of the contribution was not explained in the planning decision and was not included in the Planning Authority response to the appeal. In accordance with section 132 of the Planning and Development Act, 2000 (as amended), An Bord Pleanála requested details from the

Local Authority of the calculations involved and the basis on which the calculation was made. The Local Authority did not supply these details.

7.3.11. The applicant states that significant financial savings would be achieved if he were to carry out the works. No financial details of this reduction have been provided.

7.3.12. Given that no basis on which the calculation was made has been submitted, I am unable to make a recommendation on the appropriateness of the special contribution applied. Section 48(12) of the Act states that a condition requiring payment of a special contribution under Section 48(2)(c) 'shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates'. Section 7.12 of the Development Management Guidelines also outlines that for such a condition to be attached by a planning authority, it is essential that the basis for the calculation of a contribution should be explained in the planning decision, including identifying the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. This information should have been contained within the planning condition and the planning authority's decision.

## **8.0 Recommendation**

8.1. I recommend that condition No. 7 be amended, and condition No.8 be omitted for the following reasons and considerations below.

## **9.0 Reasons and Considerations**

Section 48 (2)(c) provides that a planning authority may require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a development contribution scheme made under Section 48 (2)(a) are incurred by the local authority in respect of public infrastructure and facilities which benefit the proposed development.

The Development Management Guidelines for Planning Authorities (Department of the Environment, Heritage and Local Government, June 2007) requires a special



development contribution condition to identify the nature/scope of works, the expenditure involved and the basis for the calculation. The planning authority has not provided the basis of the calculation of the sum required (€23,275) and accordingly has not met the criteria for properly levying a contribution as required by Section 48 of the Act. In respect of condition No. 8, the Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered that the condition failed to meet the requirements of Section 48(2)(c) of the Act and should thus be omitted.

## 10.0 Amended Condition No.7

7	<p>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 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 €73,221.68</p>			
	<b>Class</b>	<b>Rate 2020 per sq.m</b>	<b>Area sq.m</b>	<b>Total</b>
		€23	3566.16	Permission €82,021.68
	Less contribution associated with former agri sheds that are being re-development - €8,800			€73,221.68
	<p><b>Reason:</b> It is considered reasonable that a contribution be made in accordance with the Tipperary County Council Development Contribution Scheme 2020 made under Section 48 of the Planning and Development Act 2000 (as amended).</p>			

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.

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Peter Nelson  
Planning Inspector

6th September 2023