



An
Bord
Pleanála

Inspector's Report

ABP-318831-24

Development	<i>7 year permission comprising, inter alia, development works to the public realm within Naas Enterprise Park, Naas, Co. Kildare.</i>		
Location	<i>Naas Enterprise Park, Naas, Co. Kildare</i>		
Planning Authority Ref.	<i>23516</i>		
Applicant(s)	<i>Green Urban Logistics Naas Ltd</i>		
Type of Application	<i>Permission</i>	PA Decision	<i>Grant Permission with conditions.</i>
Type of Appeal	<i>First Party Section 48</i>	Appellant	<i>Green Urban Logistics Naas Ltd</i>
Observer(s)	<i>None</i>		
Date of Site Inspection	<i>08/04/2024</i>	Inspector	<i>Andrew Hersey</i>

Context

1. Site Location/ and Description.

The site is located within Naas Enterprise Park, Naas, Co. Kildare

2. Description of development. The proposed development comprises of:

- *Permission for a 7 year permission comprising, inter alia, development works to the public realm within Naas Enterprise Park*

- *Proposed development works occur primarily on Lime Drive and Rowan Tree Road and adjacent to Elm Road*
- *Works include traffic calming measures, footpath and cycle paths.*
- *Landscaped Amenity Nodes*
- *Seating and Tree Planting*
- *Cycle Parking and Outdoor Exercise Facilities*
- *Other Amenity Areas and an*
- *Attenuation Pond*
- *All on a site area of 8.43ha*

3. Planning History.

- Planning Reg. Ref. 011013: permission granted sought for (a) 14 no. ind. buildings sub-divided into units of 20 no. 220sq.m units, 13 no. 330sq.m units, etc. (b) retention of 1 no. 6014sq.m industrial unit etc. (c) 5862sq.m extension etc. (d) roads, lighting etc

4. National/Regional/Local Planning Policy

- The Kildare County Development Plan 2023- 2029 is the statutory plan in force at present
- Most of the site is zoned H3 (Industry and Warehousing) in which the objective is '*To provide for new warehousing and industrial development*'.
- Kildare County Council Development Contribution Scheme 2023-2029

5. Natural Heritage Designations

Not relevant to this case

Development, Decision and Grounds of Appeal

6. PA Decision. Permission was granted subject to 17 conditions

- *Condition 27 relates to Section 48 Development Contribution which in this case is €57,445.50*

7. Internal Reports

None of relevance

8. Prescribed Bodies

None of relevance

9. Grounds of Appeal

An appeal was received by the First Party c/o Brock McClure on the 11th January 2024. The appeal is with respect of the S48 Development Contribution imposed under Condition 27 The appeal in summary states:

- That the development contributions imposed by Kildare County Council are incorrectly applied.
- That the Planning Authority when calculating contributions included attenuation ponds which is inappropriate. If the attenuation ponds were not included in the contribution calculation, the contribution can be reduced to €7322.00
- That the size of the attenuation ponds have been incorrectly calculated on the basis of an area 3.3409ha. The project engineer has calculated the area is 1.5263ha. Taking account of the same, the contribution can be reduced to €30,226.50.
- That attenuation ponds were not taken into accounts in other developments in the enterprise park.
- The appellant in this regard cites Planning Reg. Ref. 23/535 for the development of Site 31 within the enterprise park and that an attenuation pond within the said development did not accrue contribution requirements.

Contributions with respect to the same was on the basis of a per square metre basis for the Warehousing Unit proposed under this application.

10. PA Response (4th April 2024)

- That the planning authority imposed contributions on the basis of 'open' development on lands at €15,000 per ha
- That under Planning Reg. Ref. 23/535, calculation were imposed on the basis of a per square metre basis for the indoor element of the proposal i.e. at €30sq.m.
- Development Contributions were calculated in accordance with Section 8.5 of the Kildare County Council Development Contribution Scheme
- Contributions were not charged for the full area (8.43ha) and were calculated on the basis of the landscaped amenity nodes only.
- These were calculated at 3.8297ha at the rate of €15,000/ha which results in a total contribution of €57,445.50

11. Observations

None received.

Environmental Screening

12. EIA Screening

The appeal is with respect of the S48 Development Contribution imposed and therefore is not a project for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

13. AA Screening

Not relevant – Appeal on S48 Development Contribution

2.0 Assessment

- 2.1. Condition 27 requires the developer to pay €57,445 in accordance with section 48 of the Planning and Development Act 2000 (as amended) as per the Councils General Development Contribution Scheme
- 2.2. The appellant has set out a case that the Development Contribution Scheme has been incorrectly applied.
- 2.3. The proposed development in summary comprises of improvement to the road network in the enterprise park which include for amenity areas specifically at three nodes. Two attenuation ponds have also been proposed as part of the development.
- 2.4. The council in submissions on the file and in the council's response to the appeal have stated that a S48 contribution was not imposed for the total area of the application, and was imposed on the landscaped amenity nodes only which they state includes for the attenuation ponds. In this respect, contributions are imposed for a total area of 3.8297ha which I consider is reasonable having regard to the fact that the entire area of the application site encompasses some 8.43ha.
- 2.5. The appellant states that it was not appropriate to impose contributions with respect to the area of the proposal which comprises of the attenuation ponds which the appellants state encompasses an area of 1.5263ha.
- 2.6. The Kildare County Council Development Contribution Scheme 2023-2029 sets out contribution rates, under Section 8.4 of the scheme for 'Miscellaneous' (development) and sets out rates for *'all other development, not covered elsewhere in the scheme'*. The section specifies a contribution of €15,000/ha for *'Open Development'*. *'Open Development'* the scheme states, *'includes development not included elsewhere in the scheme which involves the carrying out of works on, in, over or under land or the making of any material changes in the use of land for example, hard standing, car parking, surface storage, motor/garage forecourts'*
- 2.7. The appellant has conceded to pay contributions with respect of three landscape nodes which have a combined area of 0.4978ha. This combined area is the same as that calculated by the council in their contribution calculation.

- 2.8. The nub of this appeal is as to whether it is appropriate to impose contributions on two attenuation ponds. The council in this regard have imposed a contribution on an area of 3.3409ha associated with these ponds.
- 2.9. The appellant argues that these attenuation ponds are ancillary and should not be subject to contributions.
- 2.10. They further state that if contributions are to be imposed on these ponds that the area associated with the said ponds is 1.5263ha (not 3.3409ha) as per the contribution imposed by the council. It is not clear as to how the appellant has calculated this.
- 2.11. It is the case therefore as to whether these attenuation ponds are part of the amenity proposed or are they in fact ancillary. There are two ponds proposed, the larger one on the southern tip of the proposed development site and one to the west of the same which is somewhat detached from the overall proposal. There is amenity space associated with the larger pond whereas the smaller pond does not have any amenity space attached.
- 2.12. In general, I would consider, in accordance with the councils response to the appeal, that it is reasonable to impose contributions on amenity spaces which comprise of the three proposed landscaped nodes. I further consider that it is not appropriate to impose a full contribution on the ponds themselves as they are necessary ancillary infrastructure to serve the proposal. However, I note that with respect to the larger of the attenuation ponds, there is amenity space adjacent to it and a pedestrian walk around the same – this is clearly an amenity area which also functions as an attenuation pond.
- 2.13. I do not consider it in any way appropriate to impose a contribution with respect to the smaller of the attenuation ponds which is detached from other parts of the proposal and is clearly has a functional rather than recreational use.
- 2.14. With respect to the above, I consider that the combined area of the three landscaped nodes is 0.4978ha and that the amenity area of the larger of the attenuation ponds is calculated at 1.925ha (as per the planners report)
- 2.15. The total area of the amenity nodes and the larger of the attenuations pond/amenity area is 2.4228ha. The contribution therefore is (2.4228 x €15,000) i.e. €36,342

2.16. In conclusion, I consider that Condition No. 27 be amended as set out in the recommendation below:

3.0 Recommendation

3.1. It is recommended that condition 27 is amended as set out below.

4.0 Reasons and Considerations

4.1. Section 48 of the Planning and Development Act 2000, as amended, requires planning authorities to make development contribution schemes which provide for the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority. The Kildare County Council Development Contribution Scheme 2023 – 2029 sets out, under Section 8.4, contributions for ‘open development’ i.e. development not included elsewhere in the scheme and which involves the carrying out of works on, in, over or under land or the making of any material changes in the use of land. The council imposed ‘open development’ contributions solely on amenity areas associated with the proposed development and not for infrastructural elements such as amendments to roads, footpaths cycle paths and ancillary landscaped verges. This is considered a fair and reasonable interpretation of the contribution scheme. The appeal submitted considers that the imposition of contributions on two attenuation ponds is unreasonable as these relate to ancillary infrastructure. While the larger of the attenuation ponds clearly has an amenity element, the smaller does not and as such the Board considers it unreasonable to impose a contribution on this smaller attenuation pond. On this basis it is recommended that the S48 condition be amended as set out below;

5.0 Conditions

5.1. Amend Condition 27 as follows:

The Applicant/Developer to pay to Kildare County Council the sum of €36, 342 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 19th

December 2022 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 34 of the Development Contribution Scheme adopted by Kildare County Council on 19th December 2022.

Reason: It is considered reasonable that the Developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning

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.

Andrew Hersey

Planning Inspector

31st December 2024