



An  
Bord  
Pleanála

## Inspector's Report

**ABP-322092-25**

### Development

- a) Construct 1 No. ancillary storage shed together with all ancillary structures and associated site works; and
- b) Amend / modify / remove Condition No. 16 (relating to a Special Development Contribution) attached to planning permission ref: 13/71 previously granted.

### Location

Ballykean, Geashill, Tullamore, Co. Offaly.

### Planning Authority

Offaly County Council

### Planning Authority Reg. Ref.

2460518

### Applicant(s)

James Brady

### Type of Application

Permission

### Planning Authority Decision

Split Decision

### Type of Appeal

First Party v. Decision

### Appellant(s)

James Brady

**Observer(s)**

None.

**Date of Site Inspection**

26<sup>th</sup> June, 2025

**Inspector**

Robert Speer

## **1.0 Introduction**

- 1.1. This is a first party appeal in respect of a split decision issued by Offaly County Council which granted permission for the construction of a storage shed together with all ancillary structures and associated site works while permission was refused for a proposal to amend / modify / remove Condition No. 16 (relating to a Special Development Contribution) as attached to the grant of planning permission previously issued under PA Ref. No. 13/71.
- 1.2. No appeal has been lodged with respect to the approval of the storage shed etc. and therefore this assessment has been confined to the decision to refuse permission for the amendment / modification / removal of Condition No. 16 of PA Ref. No. 13/71.

## **2.0 Site Location and Description**

- 2.1. The proposed development site is located in the rural townland of Ballykean, Tullamore, Co. Offaly, approximately 4.0km southeast of the village of Geashill and 8.2km northwest of Portarlinton, in an area which is typically rural in character and dominated by a rolling patchwork of agricultural fields interspersed with intermittent instances / groupings of one-off rural housing, farmyards and associated outbuildings. It has a stated site area of 0.72 hectares, is irregularly shaped, and comprises an existing piggery (which includes 2 No. pig fattening / finishing units) in addition to an adjacent field set in pasture which is in turn bisected by a watercourse known as the Kilcooney Stream. It occupies a recessed position set back from the public road (Local Road No. L1013) and is bounded by a combination of mature hedgerow and fencing with agricultural lands on all sides. Access is obtained via a private laneway that extends southwards from the public road to serve the subject site and neighbouring lands. The overall condition of Local Road No. L1013 (the roadway towards which a special development contribution was imposed pursuant to Condition No. 16 of PA Ref. No.13/71) is generally good with evidence of considerable and comparatively recently completed road improvement works noted during the course of a site inspection.

### 3.0 Proposed Development

3.1. The subject proposal comprises the following:

- The construction of an agricultural storage shed (floor area: 279.4m<sup>2</sup>) to be used for purposes ancillary to the existing pig finishing operation together with all ancillary structures and associated site works; and
- The amendment, modification or removal of Condition No. 16 (which refers to the payment of a special development contribution) from the grant of permission previously issued in respect of PA Ref. No. 13/71.

### 4.0 Planning Authority Decision

#### 4.1. Decision

4.1.1. On 20<sup>th</sup> February, 2025 the Planning Authority issued a split decision in respect of the proposed development as follows:

- To **GRANT** permission for the construction of 1 No. ancillary storage shed together with all ancillary structures and associated site works, subject to 5 No. conditions.
- To **REFUSE** permission for the proposal to amend / modify / remove Condition No. 16 (relating to a special development contribution) attached to Planning Permission Ref. 13/71 as previously granted for the following reason:
  - The proposed amendment, modification, or removal of condition no. 16 (relating to a special development contribution) attached to planning permission (ref: 13/71) previously granted would contravene materially the above condition (no. 16) attached to an existing permission (ref: 13/71).

Furthermore, the duration (5 years) of the previous planning permission (13/71) has elapsed as has the allowable time to amend, modify or remove any conditions attached to same. The proposed development would set an undesirable precedent for the amendment, modification or

removal of planning permission conditions beyond the life of the permission and would therefore be contrary to the proper planning and sustainable development of the area.

## **4.2. Planning Authority Reports**

### **4.2.1. Planning Reports**

Details the site context, planning history and the relevant policy considerations along with the contents of the various submissions / reports received with respect to the proposed development. It subsequently analyses the merits of the proposed storage shed and concludes that this element of the development would not negatively impact the amenities of the area or of property in the vicinity before recommending a grant of permission, subject to conditions.

With respect to the proposal to amend / modify / remove Condition No. 16 of the grant of permission previously issued for PA Ref. No. 13/71, the report states that this would materially contravene that condition and proceeds to recommend that permission be refused for the reason stated.

### **4.2.2. Other Technical Reports**

*Water Services:* No objection, subject to conditions.

*Edenderry Municipal District Engineer:* In relation to the construction of the proposed storage shed and ancillary structures etc., it is recommended that permission be granted, subject to conditions. However, with regard to the proposal to amend / modify / remove Condition No. 16 as attached to the grant of permission issued for PA Ref. No. 13/71, it is stated as follows:

*‘On consideration of the development under this application, the storage shed proposed is for the storage of machinery and ancillary items and its development is unlikely to increase the intensity of the use of the L1013 public road. A further consideration is that a significant section of the L1013 public road has been upgraded in 2024, therefore it can be envisaged that Offaly County Council’s annual maintenance costs on the L1013 will be significantly reduced in the coming year. This in turn would suggest that the annual special*

*development contribution figure of €7,000 under Condition No. 16 of Planning Application PL 13/71 may be reduced. We therefore recommend that the Special Development Contribution Condition No. 16 of PL/13/71 be adjusted to €4,000 per annum index linked’.*

#### **4.3. Prescribed Bodies**

None.

#### **4.4. Third Party Observations**

None.

### **5.0 Planning History**

#### **5.1. On Site:**

- 5.1.1. PA Ref. No. 1371. Was granted on 15<sup>th</sup> May, 2014 permitting James Brady permission for the construction of a pig-finishing unit, 4 No. meal bins and associated site works.

Condition No. 16 is of particular relevance in the context of the subject appeal:

*‘The developer shall pay to the Planning Authority a financial contribution as a special contribution under section 48(2)(c) of the Planning and Development Act 2000 as amended in respect of restoration of 1000 metres of roadway on the L1013, leading to the site. The amount of the contribution shall be an annual payment of €7,000 towards expenditure that will be incurred by the Planning Authority in respect of improvements to the road network facilitating the proposed development. The annual sum shall be index linked in accordance with changes in the Wholesale Price Index – Building & Construction section as published by the CSO. The 1<sup>st</sup> annual sum shall be paid to the Planning Authority prior to the commencement of any development on site and subsequent annual payments on yearly timescales thereafter.*

*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 in the Development*

*Contributions Scheme and which will benefit the proposed development'.*

- 5.1.2. PA Ref. No. 20134. Application by Aidan Brady for permission to construct a pig-finishing unit, 2 No. meal bins and associated site works. This application was withdrawn.
- 5.1.3. PA Ref. No. 21526 / ABP Ref. No. ABP-311957-21. Was refused on appeal on 4<sup>th</sup> August, 2023 refusing Aidan Brady permission for a pig finishing unit, 2 No. meal bins and associated site works (an Environmental Impact Assessment Report and Natura Impact Statement relating to the development was submitted with the application).
- On the basis of the information provided with the application and the appeal, including the revised Natura Impact Statement received by the Board, and noting the presence of a stream (Kilcooney Stream) running through the development site that is hydrologically connected with the River Barrow and Nore Special Area of Conservation (Site Code: 002162) and is proposed to be realigned and piped with a 1.2 metre diameter concrete pipe, the Board was not satisfied that the site works and the site-specific mitigation measures have been adequately set out or addressed in the submitted revised Natura Impact Statement and supporting documentation. Accordingly, the Board concluded that there was insufficient information on file to exclude adverse effects on the integrity of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) with scientific certainty, having regard to the site's conservation objectives arising from the potential for deterioration of the water quality.
  - Having considered the submitted Environmental Impact Assessment Report (EIAR) in support of the application for the proposed development, by reference to Section 172 of the Planning and Development Act, 2000, as amended, and Article 94 and Schedule 6 of the Planning and Development Regulations, 2001, as amended, the Board considers that it does not adequately identify, describe or assess the direct and indirect significant effects on the environment of the proposed development in accordance with Section 172 (1D) (a) of the Planning and Development Act, 2000, as

amended. Accordingly, the Board was unable to carry out a complete environmental impact assessment in respect of the proposed development, including, as part of the assessment, reaching a reasoned conclusion on the significant effects on the environment of the proposed development and the integration of the reasoned conclusion into its decision as required under Section 172 of the Planning and Development Act, 2000, as amended. The following was of particular note:

- The requirements of Article 94 of the Planning and Development Regulations, 2001, as amended, are not fulfilled in the submitted EIAR in that the requirement to outline experts who contributed to the preparation of the report or of the experts' level of competence and experience, including relevant qualifications, if any, in relation to such parts and information in relation to the experts' individual expertise such as would demonstrate the experts' competence, has not been fulfilled in the submitted EIAR.
- The information on alternatives presented does not provide a sufficient description of the reasonable alternatives studied by the person or persons who prepared the EIAR, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the proposed development on the environment, as required under Article 94 and Schedule 6 of the Planning and Development Regulations, 2001, as amended.
- The EIAR does not provide an adequate description of the baseline environment or provide a systematic analysis and assessment of the potential effects of the proposed project on the receiving environment as required under Article 94 and Schedule 6 of the Planning and Development Regulations, 2001, as amended. The detail presented in the EIAR is, in places unsupported, unclear, ambiguous and lacking in scientific evidence. This is particularly relevant in relation to the information presented on the water environment.



## 6.0 Policy and Context

### 6.1. National Policy:

- 6.1.1. 'Development Contributions, Guidelines for Planning Authorities' as issued by the Department of the Environment, Community and Local Government (January, 2013)
- 6.1.2. 'Development Management, Guidelines for Planning Authorities' as issued by the Department of Environment, Heritage and Local Government (June, 2007)

### 6.2. Local Policy:

#### 6.2.1. Offaly County Development Plan, 2021-2027:

##### Chapter 13: Development Management Standards:

##### Section 13.6: Development Contributions:

The Council, taking into consideration the capital expenditure necessary for the provision of public infrastructure and facilities, will require the payment of general financial contributions in accordance with the Development Contribution Scheme to offset a portion of their costs. Developers may also be required to carry out works at their own expense to facilitate their development and these will be specified as a condition of their planning permission.

#### 6.2.2. Offaly County Council Development Contribution Scheme, 2021-2025:

##### Section 20. Agricultural Development:

A contribution shall be payable on all roofed structures, whether open or enclosed. Contributions shall be payable on the cumulative roofed floor area exceeding 500m<sup>2</sup>.

##### Section 27: Exemptions:

The following categories of development will be exempted from the requirements to pay development contributions under this scheme:

##### *(k) Agriculture:*

The first 500m<sup>2</sup> of agricultural development granted permission within a farm – (100% exemption) Thereafter the rates as set out in Table 2 (B) will apply. (Agricultural development in this instance excludes silos and yards.) In relation to polytunnels, the flat rate agricultural charge applies.

Agricultural development - demolition and replacement of buildings on existing site shall be exempted subject to no intensification or increase in animal numbers taking place or an increase in floor area.

### **6.3. Natural Heritage Designations**

6.3.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- Raheen Lough Proposed Natural Heritage Area (Site Code: 000917), approximately 2.2km southwest of the site.
- Daingean Bog Natural Heritage Area (Site Code: 002033), approximately 7.4km northwest of the site.
- River Barrow and River Nore Special Area of Conservation (Site Code: 002162), approximately 8.0km south of the site.

### **6.4. EIA Screening**

6.4.1. The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and therefore does not require preliminary examination or environmental impact assessment. See Form 1 (attached).

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

- This appeal focuses on the decision of the Planning Authority to refuse permission for the amendment / modification / removal of Condition No. 16 (which relates to the imposition of a special development contribution) of the grant of permission previously issued in respect of PA Ref. No. 13/71.
- Section 146A of the Planning and Development Act, 2000, as amended, provides for the amendment of permissions etc. as follows:  
  
(1) Subject to subsection (2) –

- (a) a planning authority or the Board, as may be appropriate, may amend a planning permission granted by it, or
  - (b) the Board may amend any decision made by it in performance of a function under or transferred by this Act or under any other enactment, for the purposes of –
    - (i) correcting any clerical error therein,
    - (ii) facilitating the doing of any thing pursuant to the permission or decision where the doing of that thing may reasonably be regarded as having been contemplated by a particular provision of the permission or decision or the terms of the permission or decision taken as a whole but which was not expressly provided for in the permission or decision, or
    - (iii) otherwise facilitating the operation of the permission or decision.
- (2) A planning authority or the Board shall not exercise the powers under subsection (1) if to do so would, in its opinion, result in a material alteration of the development, the subject of the permission or decision concerned.
- (3) A planning authority or the Board, before it decides whether to exercise the powers under subsection (1) in a particular case, may invite submissions in relation to the matter to be made to it by any person who made submissions or observations to the planning authority or the Board in relation to the permission or other matter concerned, and shall have regard to any submissions made to it on foot of that invitation.
- (4) In this section “term” includes a condition.
- When making the subject application, the applicant was cognisant of the restrictions on planning authorities when seeking to amend existing decisions, and hence the nature of the request sought (i.e. to amend / modify / remove) was intended to allow the Council maximum scope when reviewing the proposal.
  - Condition No. 16 of PA Ref. No. 13/71 requires the payment a special development contribution towards unspecified road upgrading works to be completed by Offaly County Council outside of the site boundary (separate

correspondence has been submitted to the Council as regards payments made to date, a copy of which is appended to the grounds of appeal).

These works are:

- Essentially undefined in a planning sense (outside of any red line boundary)
- To be completed by Offaly County Council along a stretch of road c. 1,000m long at a location, time & frequency of its choosing, and under its supervision.

It is the applicant's opinion that the said works are effectively indistinguishable from normal road maintenance works.

- Section 146A(2) of the Act does not permit an alteration if (in the opinion of the planning authority or the Board) it would '*result in a material alteration of the terms of the development, the subject of the permission or decision concerned*'. In this regard, while it is acknowledged that the Planning Authority has determined that the alteration of Condition No. 16 would '*contravene materially*' said condition, and although the removal of the condition could be deemed as such, the case can also be made that an amendment or modification of the condition would not necessarily '*result in a material alteration of the terms of the development*'.
- It is accepted that there was an opportunity to address the imposition of the special development contribution (Condition No. 16) when permission was originally granted for PA Ref. No. 13/71 and that this was not availed of, however, the subject application is now seeking to address the matter.
- The retention of Condition No. 16 in an amended format would not result in a material alteration of the terms of the development with the Planning Authority having already acceded to such a proposition (in part as the applicant feels that the recurrent fee is excessive) as per its correspondence dated 13<sup>th</sup> February, 2024 (copy attached).

The Board is requested to amend Condition No. 16 to facilitate:

- a) The reduction / alteration of the figure included in the condition, in line with specifically defined and appropriately costed and apportioned special

development contributions that fully comply with the requirements of the Planning and Development Regulations (if applicable); and

- b) Associated with the above, a clause that the proposed figure can be remitted to the Board for decision if there is no agreement between the applicant and the Council.
- The revision of the condition as previously outlined will:
  - Facilitate the doing of any thing pursuant to the permission or decision where the doing of that thing may reasonably be regarded as having been contemplated by a particular provision of the permission or decision or the terms of the permission or decision taken as a whole but which was not expressly provided for in the permission or decision; or
  - Otherwise facilitate the operation of the permission or decision.without materially altering the permission / condition as envisaged while ensuring the equitable and appropriate implementation of the condition.
- The singular issue of concern relates to the imposition of a special development contribution which is considered to be:
  - Overly punitive;
  - Not related to the scale of the activity concerned; and
  - Should have been covered by the general development contribution scheme.

The applicant requests that Condition No. 16 be revised to facilitate the variation of the figure included and to include provision whereby the Board may be called upon to adjudicate on the matter should the parties concerned fail to reach agreement.

## **7.2. Planning Authority Response**

- The Board's attention is drawn to the technical reports on file. It is requested to uphold the decision of the Planning Authority to refuse permission.

### 7.3. **Observations**

None.

### 7.4. **Further Responses**

None.

## 8.0 **Assessment**

8.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- The proposed amendment / modification / removal of the special development contribution required by Condition No. 16 of the grant of permission issued for PA Ref. No. 13/71
- Appropriate assessment

These are assessed as follows:

### 8.2. **The Proposed Amendment / Modification / Removal of the Special Development Contribution required by Condition No. 16 of the Grant of Permission issued for PA Ref. No. 13/71:**

8.2.1. By way of background, Condition No. 16 of the grant of permission issued for PA Ref. No. 13/71 requires the payment of a special development contribution pursuant to Section 48(2)(c) of the Planning and Development Act, 2000, as amended, in respect of the restoration of a 1,000m stretch of Local Road No. L1013 on the approach to the proposed development site. The condition further states that the amount of the contribution will be an annual payment of €7,000 towards expenditure that will be incurred by the Planning Authority in respect of improvements to the road network facilitating the proposed development while the annual sum will be index-linked to the Wholesale Price Index (Building & Construction) published by the Central Statistics Office. Notably, the attachment of this condition was not appealed at the time of the decision and the development then approved (i.e. the construction of a pig-finishing unit, 4 No. meal bins and associated site works) has since been completed and is operational.

- 8.2.2. The subject proposal seeks to amend or modify the terms of that condition with a view to reducing the special development contribution, or alternatively, to remove the condition in its entirety. It has been submitted that Condition No. 16 effectively seeks the continued payment of monies towards unspecified road upgrading works beyond the confines of the development site boundary (in reference to PA Ref. No. 13/71) which are indistinguishable from normal road maintenance works. Such an imposition is considered by the applicant to be overly punitive and unrelated and / or disproportionate to the scale of the permitted activity while the cost of the works themselves is thought likely to have been covered by the General Development Contribution Scheme. Further correspondence submitted in support of the application and appeal asserts that the special development contribution does not relate to '*specific exceptional costs*' as required by Section 48(2)(c) of the Act and that its imposition is thought to be an attempt to absolve the Council of any obligation as regards the maintenance and upkeep of the section of road involved by requiring farmers, such as the applicant, to pay the full cost of the road upgrade, or sections thereof (regardless of who else may be using the road), every 12 No. years. It has also been suggested that the amount of the contribution is excessive given the level of traffic generation attributable to the development approved under PA Ref. No. 13/71. The case has thus been put forward that the condition should be amended / removed pursuant to Section 146A of the Planning and Development Act, 2000, as amended, with any amendment of the amount sought clearly defined, appropriately costed and apportioned, while a clause should also be inserted that the determination of the amount due can be remitted to the Commission in the event of no agreement being reached between the applicant and Offaly County Council.
- 8.2.3. Having reviewed the available information, it is regrettable that the applicant did not seek to challenge the imposition of the special development contribution sought by Condition No. 16 of PA Ref. No. 13/71 by way of an appeal within the appropriate timeframe following the notification of the decision of the Planning Authority to grant permission for that application. In my opinion, this would have been the most appropriate mechanism by which to resolve the subject matter of the current appeal. Furthermore, given the nature of the subject appeal, as well as the considerable period of time which has elapsed since the approval of PA Ref. No. 1371, I am satisfied that the provisions of Section 146A of the Act as regards '*amendments of*

*permissions etc. of a clerical or technical nature*', do not apply in this instance as the development has been enacted. In any event, Section 146A was never intended to be interpreted as affording a 'secondary' mechanism by which an applicant / developer may mount a direct challenge to the merits of a particular planning decision. However, I will assess the subject proposal as an appeal of a decision made pursuant to Section 34 of the Act. In this regard, I am satisfied that the nature of the subject appeal, which seeks to amend, modify or remove a condition attached to a grant of permission which has been implemented, is procedurally appropriate and comparable to instances of planning applications having been lodged for the removal of occupancy conditions or the revision of the hours of operation etc. With regard to the assertion in the reason for refusal that the duration of PA Ref. No. 13/71 has elapsed thus prohibiting any amendment of the condition in question, this is incorrect in view of the fact that the grant of permission issued under PA Ref. No. 13/71 has been implemented and is extant.

(The Commission's attention is drawn to the ruling of the High Court in *South-West Regional Shopping Centre Promotion Association Ltd. and Stapleystown Company v. An Bord Pleanála* 2015 No. 282 JR wherein it was held that there is nothing in the Planning and Development Act, 2000, as amended, which precludes the power to amend a planning permission, although the circumstances of the subject appeal (including its lodgement beyond the duration of the original grant of permission) differ from that case).

- 8.2.4. It is apparent from a reading of Condition No. 16 that the purpose of the special development contribution was to provide for the *'restoration of 1000 metres of roadway on the L1013'* leading to the site and that the monies sought would be put towards *'expenditure that will be incurred by the Planning Authority in respect of improvements to the road network facilitating the proposed development'*. The inclusion of this condition derives from a recommendation contained in a report prepared by the Edenderry Area Engineer (dated 27<sup>th</sup> March, 2014) for PA Ref. No. 13/71 which states the following:

*'The applicant shall pay to the planning authority an initial sum of €7,000 as a special contribution towards the restoration of 1000 metres of roadway on the L1013, leading to the site. This cost is an annual contribution towards expenditure that will be incurred by the Planning*



*Authority in respect of improvements to the road network facilitating the proposed development. This cost is based on an annual contribution levy formula:*

$$\text{"((A/B) - 1 x C) / A"}$$

*Where A is the expected road life in year,*

*B is the reduced life of the road in years as a result of the proposed development and*

*C is the total cost of construction.*

*The annual sum shall be index linked in accordance with changes in the Wholesale Price Index – Building & Construction section as published by the CSO. The 1st annual sum shall be paid to the Planning Authority prior to the commencement of any development on site and subsequent annual payments on yearly timescales thereafter.*

*The values applied to this calculation are as follows:*

*A – 12 years (based on Area Engineer's experience)*

*B – 6 years (based on Area Engineer's experience)*

*C – €84,000 – based on: 1000 metres of road (minimum length of road allowed for financing by Dept.) x 4.0 metres (average road width) x 21 (cost / m<sup>2</sup> of road restoration by Offaly County Council Edenderry Area Office in 2013).*

*Formula: ((A/B) - 1 x C) / A*

*Annual Cost: ((12/6) - 1 x €84,000) / 12 = €7,000*

*Reason: It is considered reasonable that the applicant should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development'.*

- 8.2.5. In assessing the merits of Condition No. 16, it is to be noted that Section 48(2)(c) of the Act states 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 scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development. Further provisions as regards the payment of any such special contribution are set out in Section 48(12) as follows:

*‘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’.*

- 8.2.6. Although the condition itself states that the special contribution will be towards the ‘restoration of 1000 metres of roadway on the L1013’ leading to the development site and the Area Engineer’s assessment of PA Ref. No. 13/71 sets out the calculation for the amount due, no explanation has been provided as to how the monies sought

amount to ‘*specific exceptional costs*’. Moreover, it is unclear as to what 1,000m stretch of Local Road No. L1013 is to be restored by way of the contribution sought. The likelihood is that the contribution relates to a section of roadway on the approach to the site from the west (which would find support given the reference in PA Ref. No. 13/71 to construction traffic being limited to use of Local Road No. L1013 west of the site (from its junction with the R420 Regional Road) as well as the requirement of Condition No. 15 to pay a further special development contribution towards the provision of 6 No. passing bays along Local Road No. L1013 between its junction with the R420 Regional Road and the site entrance, however, it was conceded by the applicant during the assessment of PA Ref. No. 13/71 that operational traffic generated by the then proposed development would likely travel along the roadway in both directions (east and west) from the development site. Accordingly, to assume that a particular section of the roadway is to be restored by way of the special contribution requires a certain amount of speculation and, in my opinion, it is this lack of specificity which undermines the test for ‘specific exceptional costs’ and further fails to adhere to the requirements set out in Section 48(12)(a) of the Act that the condition specify the particular works carried out, or proposed to be carried out, by the local authority to which the contribution relates. Such a conclusion would find support in the ‘*Development Contributions, Guidelines for Planning Authorities*’ issued by the Department of the Environment, Community and Local Government in 2013 wherein it is stated that:

*‘A special development contribution 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’.*

- 8.2.7. Notwithstanding the foregoing, it is of relevance to note that Condition No. 16 expressly refers to the ‘*restoration*’ of a section of roadway as opposed to any future ‘*maintenance*’ (which would typically be accounted for in the adopted Development

Contribution Scheme). In this regard, I would have difficulty in reconciling the assertion that the ongoing payment of a special contribution over the lifetime of the development approved under PA Ref. No. 13/71 is required for 'specific' road restoration / improvement purposes and that the monies raised will not instead be used for purposes more akin to road maintenance. It is my opinion that the per annum payment required by Condition No. 16 effectively amounts to a continuous 'maintenance' levy as opposed to any contribution towards road restoration. Furthermore, the use of the term '*restoration*' along with the reference to '*improvements to the road network facilitating the proposed development*' imply a limit (both physically and in terms of timespan) to the works towards which the contribution will be put. In this regard, I refer to Section 48(12) of the Act wherein provision has been included for a mechanism by which an applicant may be refunded monies paid by way of special contribution should the '*particular works*': i) not be commenced within 5 years of the date of payment of the contribution (or final instalment thereof, if paid by phased payment); ii) have commenced, but have not been completed within 7 years of the date of payment of the contribution (or final instalment thereof, if paid by phased payment); or iii) the local authority has decided not to proceed with the proposed works or part thereof. The fact that the Act has set specific time limits for the 'particular works' to be commenced and completed (as well as referring to the payment of a 'final' instalment) implies a finality to the works themselves with the result that Section 48(2)(c) is not intended to accommodate ongoing payments which are incapable of refund. In the subject instance, the application of Condition No. 16 as a per annum payment serves to deny the applicant any prospect of seeing the specific 'restoration' works being completed or of availing of the prescribed refund mechanism.

- 8.2.8. At this point, I would advise the Commission that the entirety of Local Road No. L1013 between its junctions with the R400 Regional Road to the east and the R420 Regional Road to the west was inspected during the course of my site visit and was found to be in a generally good condition in terms of overall carriageway width and surface treatment. More particularly, it was evident that considerable road improvement / upgrading works (including resurfacing, drainage works, and road marking) have been carried out along much of its length with the section between the R420 Regional Road and Garrymona (c. 1.1km east of the site entrance) appearing

to have undergone notable improvement works comparatively recently. In this regard, I would draw the Commission's attention to the report prepared by the Edenderry District Engineer (dated 19<sup>th</sup> February, 2025) in respect of the subject application wherein it is stated that a significant section of Local Road No. L1013 was improved in 2024 and thus it was envisaged that the Council's annual maintenance costs on the L1013 will be significantly reduced in the coming years. A comparison of the current road condition with that shown in the photographs submitted by way of additional information in support of PA Ref. No. 13/71 further verifies the considerable road improvements carried out along the local road between the site entrance and the R420 Regional Road. Accordingly, it is apparent that significant improvement works have been completed along Local Road No. L1013 since the approval of PA Ref. No. 13/71 and thus it would be reasonable to surmise that these equate to the *'restoration of 1000 metres of roadway on the L1013'*. Indeed, the contents of the District Engineer's Report dated 19<sup>th</sup> February, 2025 are of further relevance as they not only confirm that road improvement works have already been carried out but that any future monies paid pursuant to Condition No. 16 of PA Ref. No. will be used for 'maintenance' purposes (i.e. not for the road restoration / improvement purposes specified by the condition).

- 8.2.9. With respect to the decision of the Planning Authority to refuse permission for the proposed amendment, modification or removal of Condition No. 16 of PA Ref. No. 13/71 on the basis that to do so would 'materially contravene' said condition, it is regrettable that no further explanation has been provided to support this conclusion. This is of particular note given that the grounds of appeal have been accompanied by correspondence dated 13<sup>th</sup> February, 2025 wherein the Council has indicated to the applicant that it is amenable to reducing the contribution required by Condition No. 16 from €7,000 to €4,000 (while reserving the right to increase or restore the amount sought). In effect, it is unclear how the Planning Authority has determined that the amount of the contribution sought can be reduced under the terms of the existing condition whereas its amendment / modification as sought by the subject application cannot be accommodated. Notably, the aforementioned correspondence also states that the Council reserves its right to increase or restore the amount of the contribution due should the *'road conditions require substantial upgrade and intervention'* thereby lending further credence to my earlier point that the monies

sought are intended for purposes akin to road maintenance as opposed to any 'specific' restoration / improvement works.

- 8.2.10. Therefore, on the basis that considerable road improvement works have been completed along Local Road No. L1013 since the approval of PA Ref. No. 13/71, which would seem to equate to the '*restoration of 1000 metres of roadway on the L1013*' as referenced in Condition No. 16 of that grant of permission, and as the payment of any monies towards the future maintenance of Local Road No. L1013 would fall outside the stated intent of Condition No. 16 and would not constitute 'specific exceptional costs' as per Section 48(2)(c) of the Planning and Development Act, 2000, as amended, it is my opinion that the continued payment of the special development contribution required by Condition No. 16 and the attachment thereof is no longer warranted. Accordingly, I would recommend that Condition No. 16 of PA Ref. No. 13/71 should no longer apply.
- 8.2.11. (In the event the Commission decides to amend, modify or remove Condition No. 16 of PA Ref. No. 13/71, I would suggest that the application of any such decision cannot be applied retrospectively and thus would not afford the applicant a mechanism by way to seek a refund of any monies already due and / or paid).

### 8.3. **Appropriate Assessment:**

- 8.3.1. Given that the subject appeal relates solely to the imposition of a special development contribution pursuant to Condition No. 16 of the extant grant of planning permission issued in respect of PA Ref. No. 13/71, no appropriate assessment issues arise in this instance.

## 9.0 **Recommendation**

- 9.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority to refuse permission to amend / modify / remove Condition No. 16 (relating to a Special Development Contribution) attached to Planning Permission Ref. 13/71 be overturned and that permission be granted for the proposed development for the reasons and considerations and subject to the conditions set out below:

## 10.0 Reasons and Considerations

- 10.1. Having regard to the planning history of the site, which required the payment of an annual special development contribution towards the restoration of Local Road No. L1013 pursuant to Condition No. 16 of planning register reference number 13/71, the extent of road improvement works completed along Local Road No. L1013 since the approval of planning register reference number 13/71, and as the payment of any further special development contribution pursuant to Condition No. 16 of planning register reference number 13/71 towards the future maintenance of Local Road No. L1013 would fall outside the stated intent of that condition and would not constitute 'specific exceptional costs' as per Section 48(2)(c) of the Planning and Development Act, 2000, as amended, it is considered that the payment of the special development contribution required by Condition No. 16 and the attachment of that condition to the grant of permission issued under planning register reference number 13/71 would no longer be considered reasonable or warranted.

## 11.0 Conditions

1. Condition No. 16 of the grant of permission issued under planning register reference number 13/71 shall no longer apply after the date of this order.

**Reason:** In the interest of clarity.

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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Robert Speer  
Senior Planning Inspector

3<sup>rd</sup> July, 2025

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>Case Reference</b>	ABP-322092-25
<b>Proposed Development Summary</b>	<p>a) Construct 1 No. ancillary storage shed together with all ancillary structures and associated site works; and</p> <p>b) Amend / modify / remove Condition No. 16 (relating to a Special Development Contribution) attached to planning permission ref: 13/71 previously granted</p>
<b>Development Address</b>	Ballykean, Geashill, Tullamore, Co. Offaly.
	<b>In all cases check box /or leave blank</b>
<p><b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b></p> <p>(For the purposes of the Directive, "Project" means:</p> <ul style="list-style-type: none"> <li>- The execution of construction works or of other installations or schemes,</li> <li>- Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)</li> </ul>	<p><input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.</p> <p><input type="checkbox"/> No, No further action required.</p>
<p><b>2. Is the proposed development of a CLASS specified in <u>Part 1</u>, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b></p>	
<p><input type="checkbox"/> Yes, it is a Class specified in Part 1.</p> <p>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</p>	State the Class here.
<p><input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3</p>	
<p><b>3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</b></p>	
<p><input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.</p> <p><b>No Screening required.</b></p>	



<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.  <b>EIA is Mandatory. No Screening Required</b>	<b>State the Class and state the relevant threshold</b>
<input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.  <b>Preliminary examination required. (Form 2)</b>  <b>OR</b>  <b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b>	<b>State the Class and state the relevant threshold</b>

<b>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</b>	
<b>Yes</b> <input type="checkbox"/>	<b>Screening Determination required (Complete Form 3)</b>
<b>No</b> <input checked="" type="checkbox"/>	<b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_