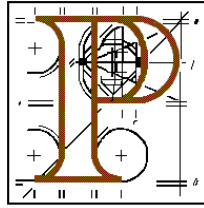


An Bord Pleanála



Inspector's Report

Board Reference: RP2122

Question: Point of detail regarding financial contribution condition no. 9 of PL09.239443

Location: Ballysax Little, The Curragh, Co. Kildare.

Referrer: Martin Nolan

Planning Authority: Kildare County Council

Planning Authority Reference: 11/12

Date of Site Inspection: Not inspected

Inspector: Sarah Moran

1.0 INTRODUCTION

- 1.1 RP2122 relates to a referral by Vincent JP Farry and Co. Ltd. Planning and Development Consultants on behalf of Martin Nolan, to the Board concerning a point of detail regarding a financial contribution payable under condition no. 9 of PL.09.239443.

2.0 BACKGROUND TO CURRENT CASE

- 2.1 Under PL09.239443, An Bord Pleanála granted permission for the construction of a house, 3 no. stable blocks, sand arena, covered horse walker, dung stead, on-site effluent treatment system, percolation area, surface water to soakways and associated site works, subject to 9 no. conditions.
- 2.2 Condition no. 9 of the Board's permission provided a general standard unspecified section 48 development contributions condition, i.e.:

“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.”

3.0 APPLICANT'S SUBMISSION

- 3.1 The submission states that the applicant made a preliminary payment of €5,000 on 2nd September 2014 and wrote to Kildare County Council on 21st December 2014 enclosing a further sum of €7,976 and making the following points:

- The proposed dwelling at 221 m² commands a charge of €20,149, as per Council's latest revisions to the Development Contribution Scheme.
- Under the terms of the adopted Contribution Scheme, the sum of €3,634 should be deducted on the basis that the applicant is providing an on-site wastewater treatment system. In addition, as *Circular Letter PS 21/2013* disentitles the Planning Authority from charging the water related element of this overall levy, the amount due decreases by a further €4,240. The applicant had already paid €5,000 to Kildare County Council and calculated that the residual amount in respect of the domestic element of the development comprised €7,275.
- With regard to the proposed equine buildings, the first 600m² of equine floor space is exempt from any levy, with the area above this threshold being subject to a net charge of €26.98 per m² (taking account of the applicant's private effluent system and *Circular Letter PS 21/2013*). Applying this rate to the 26 m² above the exemption limit, the applicant calculated that the sum due in respect of the proposed equine buildings was €701.

The applicant submitted €7,976 on this basis. It is submitted that the applicant believed that the Planning Authority had accepted the submission and the combined payment of €12,976 as the Council failed to respond to the offer for a period of almost a year. The applicant therefore commenced construction on the permitted development. However, the planning authority indicated that an additional payment is required in correspondence to the applicant issued on 12th October 2015 and 12th November 2015, stating:

"To date condition number 9 of the above planning permission has not been complied with. There is an outstanding balance of €3,698.68. Please arrange payment within one month from the date of this letter."

3.2 The applicant submits that the following issues arise:

- The key issue of whether Kildare County Council should require a water contribution in circumstances where it is no longer lawfully charged with the provision of this type of infrastructure.
- The applicant secured permission during the lifetime of the previous Development Contribution Scheme, prior to the issue of *Circular Letter PS 21/2013*.
- The applicant contends that it would be reasonable and lawfully open to An Bord Pleanála to take account of the revisions to the scheme, in the nature of *Circular Letter PS 21/2013* when calculating an appropriate sum in this instance.
- The submission notes that the permitted house has been built but not yet occupied and the applicant has not yet placed any water-related demands on the planning authority.

- The submission refers to Board decision PL09.216074, under which the Board reduced a €36,600 levy to €10,800 on a proposed development at Claregate St. Kildare, linking the amount of the levy and the proportionate cost of providing infrastructure.
- Section 29 of the new Urban Regeneration and Housing Act amends section 48 of the 2000 Act. It expressly and explicitly envisages that recipients of permission in times past should be afforded the benefit of reduced contribution rates which have been adopted since the granting of consent in the first instance.
- The subject permission relates to a dwelling that has not been sold, ref. section 29(3)(A)(b) of the 2015 Act. The applicant submits that it would be legitimately open to the Board to apply the charges which are currently authorised in the 2015 Contribution Scheme. Table 8(I) of the new Scheme authorises a residential rate of €50 per m² for accommodation of this size. As this house measures 221 m², the aggregate levy due for this development would be €11,050. Under this scenario, the Board would issue an Order requiring the Council to issue a refund to the applicant of approx. €1,926. The submission notes that the Board has the power to issue such a direction and refers to determination PL39DT.0232.

The submission is accompanied by copies of correspondence between the applicant and Kildare County Council dated 21st December 2014, 12th November 2015 and 18th November 2015.

4.0 PLANNING AUTHORITY RESPONSE

4.1.1 The response of the planning authority makes the following main points:

- Permission was granted for a residential development with a floor area of 221m², which under the terms of the 2011 Development Contribution Scheme incurred a contribution charge of €20,000, the rate applicable at the time the permission was granted. As the applicant was providing his own waste water facility, a reduction of €3,600 was applied giving a reduced contribution calculation of €16,400.
- Permission was also granted for 3 stables and a horse walker. The walker was exempt from development contributions. The Development Contribution Scheme provided for stables, with certain exemptions. The floor area of the stables was calculated at 447m², with an exemption of 600m² applicable, reducing the area for calculation of charges to 0m². Kildare County Council issued an invoice on 12th March 2015, a copy of same is submitted.
- A payment of €5,000 was submitted to the Council by Tom O'Loughlin Architects on behalf of the applicant on 2nd September 2014, in part payment of the contribution charges imposed. A copy of receipt for same is submitted.

- The Council issued a response to the applicant on 19th September 2014, citing the terms of the Development Contribution Scheme, whereby a 50% payment is due upon commencement of development. A shortfall had been identified in the payment received.
- A further submission of €7,976 was made by Vincent JP Farry & Co. Ltd. on behalf of the applicant to the Council on 21st December 2014. The submission made a determination of the contribution charges based on Circular Letter PS 21/2013, which does not apply to this file.
- Circular Letter PS 21/2013 relates to arrangements for the payment of waste and waste water elements of the contribution charge to Irish Water. The circular is specific to permissions granted on or before the 1st January 2014 whereby the water or waste water elements will be invoiced directly by Irish Water and not provided for in the calculations issued in the Decision to Grant or Final Grant. Permissions granted before 1st January 2014 will have the water and waste water elements included where applicable and Kildare County Council will arrange to transfer these monies to Irish Water. Circular Letter PS 21/2013 set out the position for all local authorities. The date on which a development is built or occupied is irrelevant as the key date for determination of the Circular is the date of grant. Each applicant is required to pay the water element of the contribution charge to either Irish Water or Kildare County Council.
- The Council issued a response to the applicant on 29th January 2015, copy submitted, setting out the position with regard to Circular Letter PS 21/2013, the balance outstanding on the account which now included indexation applied on 1st September 2015 of €274.68.
- No further correspondence or payment was received by the Council. A reminder was issued on 12th October 2015, copy of same submitted.
- Vincent JP Farry & Co. Ltd made a further submission to the Council on behalf of the applicant on 12th November 2015, copy submitted, again referring to Circular Letter PS 21/2013 and the calculation of the equine element and the appropriate exemption. The Council responded on 18th November 2015, copy submitted.
- The Council refutes the statement of the applicant that he believed that the planning authority had accepted the submission and the combined payment. The Council states the following reasons for this:
 - A response issued 17 days after the receipt of the first payment, setting out the terms of the Scheme and the shortfall in payment, dated 19th September 2014, copy submitted.
 - A response issued 38 days after receipt of the second payment, again setting out the basis of calculation and the balance outstanding.
 - When the Council receives payment in full against contributions imposed a letter of compliance issues for that financial

contribution. No letter of compliance issued or will issue until the final balance has been paid on account.

- The Council submits an extract from the Department of Environment website in relation to the Urban Regeneration and Housing Bill 2015. Part 4 of same states in relation to the amendment of Parts II and III of the 2000 Act:

“Section 29 amends section 48 of the Act of 2000 by providing that where a new development contribution scheme is adopted by a planning authority to provide for reduced development contributions compared to those which were provided for under the previous scheme, the reduced development contributions under the new scheme shall have retrospective effect in respect of planning permissions granted prior to the date of the adoption of the revised scheme, subject to the development, or part of that development, not having commenced prior to the date of the adoption of the revised scheme.”

As a commencement notice was received by the Planning Department of the Council on the 13th February 2014 with a commencement date of the 28th February, the applicant does not qualify under the above Act. The development must not have commenced prior to the date of adoption of the revised Development Contribution Scheme (3rd December 2015).

- The Council is of the view that the submission for a revised contribution charge relies heavily on 2 elements of legislation, the contents of which cannot be applied to this application. The Council confirms that the terms of the Development Contribution Scheme have been correctly applied and a balance of €3,698.68 remains owing.

5.0 APPLICANT’S RESPONSE

5.1 The following points are made:

- Several items have been agreed between the applicant and the Council, including the fact that condition no. 9 required the applicant to pay a contribution in respect of 221 m² and that the stable element of the overall proposal is exempt from development contributions.
- The invoice forwarded by the planning authority to the applicant on 12th March 2015 was not received, possibly due to the use of an incomplete address. Thus, the applicant’s preliminary payment of €5,000 should not be construed as acceptance of the Council’s requirement.
- The submission refers to appeal ref. PL09.241911, in which an applicant was forced to lodge an entirely fresh application for the retention of a dwelling, in order to reduce an inappropriate levy that had originally been imposed by Kildare County Council under reg. ref.

05/598. It would be unreasonable to force the applicant to follow a similar course, simply to allow the entitlements of Circular Letter PS 21/2013 to be given effect in this case.

- Given that the Development Contributions Guidelines and the Urban Regeneration and Housing Act 2015 both seek to rectify years of overcharging, it is odd to ask the Board to adhere to the 2011 Contribution Scheme in circumstances where its provisions have now been rejected by the planning authority in favour of the 2015 Contribution Scheme. It is submitted that it would be reasonable to apply the latter provisions, especially as the Circular Letter and the Act indicate that it is government policy for lower rates to be applied.

6.0 POLICY AND LEGAL CONTEXT

6.1 Kildare County Development Plan 2011-2017

6.1.1 The site is located in the Rural Housing Policy Zone 1 under the current County Development Plan.

6.2 Development Contributions Guidelines for Planning Authorities January 2013

6.2.1 This document produced by the DoECLG provides non-statutory guidance for local authorities drawing up development contributions in the context of radical economic changes. All planning authorities were advised to commence a review of their development contribution schemes by 31st March 2013, to ensure compliance with the Guidelines. Water services were to continue to be provided for in development contribution schemes until further guidance was issued by the Department. Chapter 2 of the Guidelines stresses the importance of a balance between funding public infrastructure and the need to encourage economic activity and job creation. It includes a requirement for planning authorities to reduce development contribution rates in certain circumstances to reflect changed economic conditions.

6.3 Circular Letter PS 21/2013 30th December 2013

6.3.1 Circular Letter PS 21/2013 was issued by the DoECLG in relation to planning issues around the transfer of water service functions to Irish Water, on foot of the enactment of the Water Services (No. 2) Act 2013 on the 25th December 2013, which transferred a range of statutory water services functions from local authorities to Irish Water from 1st January 2014.

6.3.2 Section (3) of PS 21/2013 relates to development contributions. It states:

“In respect of permissions under section 34 of the Planning Act granted prior to 1st January 2014, the full development contribution (where such was attached as a condition of the planning permission) including, where relevant, the portion in respect of water services infrastructure, must be paid to the planning authority, in accordance with the terms of the permission.

After 1st January 2014, planning authorities, when granting permission, should no longer include a portion in respect of water services infrastructure in any development contribution applied. A charge in respect of water services infrastructure provision in respect of developments granted planning permission after 1st January 2014 will instead be levied by Irish Water ...

... New development contribution schemes made by planning authorities after 1st January 2014 should not contain charges in respect of water services infrastructure.”

6.4 Planning and Development Act 2000 (as amended, including the Urban Regeneration and Housing Act 2015)

6.4.1 Section 48 of the Act allows a planning authority when granting permission to include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority. Section 48(2)(a) provides that the basis for the calculation of such contributions shall be set out in a development contribution scheme.

6.4.2 Section 48(3A), as inserted by section 29 of the Urban Regeneration and Housing Act 2015, provides that where a permission including conditions requiring development contribution(s) in accordance with a development contribution scheme has been granted in respect of a development and the basis for the determination of the contribution under subsection (1) has changed—

(a) where the development is one to which Part II of the Building Control Regulations 1997 (S.I. No. 496 of 1997) applies and a commencement notice within the meaning of that Part in respect of the development has not been lodged,

Or

(b) where the development comprises houses and one or more of those houses has not been sold,

the planning authority shall apply that change to the conditions of the permission where to do so would reduce the amount of the contribution payable.

Section 48(3B) provides that where a development referred to in subsection (3A) comprises houses one or more of which has not been sold the planning authority shall apply the change in the basis for the determination of the contribution referred to in that subsection only in respect of the unsold houses. Section 38(3C) provides that where the planning authority applies a change in the basis for the determination of a development contribution under subsection (3A) it may amend a condition referred to in subsection (1) in order to reflect the change.

- 6.4.3 Section 48(10) provides that an appeal can only be brought to the Board in relation to a condition requiring a contribution to be paid in accordance with a Development Contribution Scheme where the applicant considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority.

7.0 ASSESSMENT

- 7.1 Section 48(10) of the Planning and Development Act 2000 (as amended) provides that an applicant can only appeal a condition requiring a development contribution in accordance with a Development Contribution Scheme where the applicant considers that the Scheme has not been properly applied. Therefore, the Board's sole remit is not to adjudicate on the merits of the Scheme but to consider whether it has been properly applied. In addition, as this appeal pertains to a point of detail, the Board will not determine the application as if it had been made to it in the first instance but will only determine the matters under appeal and will issue appropriate directions to the Planning Authority when it has determined the appeal. I intend to assess the relevant issues as follows:

- Calculation of development contributions under the Kildare County Council Development Contribution Scheme 2011-2018 and payments made by the applicant.
- Assessment of applicant's case.
- Conclusion

7.2 Calculation of Development Contributions and Payments Made by Applicant

- 7.2.1 The subject development was permitted by the Board under PL09.239443 on 7th June 2012. As noted above, condition no. 9 of the permission required standard development contributions in accordance with the relevant section 48 Development Contribution Scheme. The Kildare

County Council Development Contribution Scheme 2011-2018 was adopted on the 7th September 2011 and therefore was in force when permission was granted (see enclosed copy of same).

- 7.2.2 Section 11 of the Scheme indicates that the residential development contribution for a house with a floor area > 220m² is €20,000. That rate includes a charge of €3,600 for waste water provision. Section 18 of the Scheme sets out exemptions and reductions, including 18(i) in relation to equine development, which states:

“The first 600 square meters of non-residential development on any equine landholding will be exempt and the contribution thereafter will be at the relevant rate for Category A: Miscellaneous Developments (Paragraph 11). This exemption is cumulative and will only be granted once on any landholding.”

Section 18(j), relating to Services, states that a deduction will apply where a private water supply or waste water system is provided to the satisfaction of the PA, those elements of development contributions will be deducted ‘*at the appropriate rate*’.

- 7.2.3 Section 13 of the Scheme provides for an annual adjustment of baseline rates on 1st September each year. The amount of the adjustment is to be based on the ‘*Wholesale Price Indices for Building and Construction i.e. Materials and Wages*’ as published by the Central Statistics Office on 30th June each year. Section 17 of the Scheme sets out general arrangements for the payment of development contributions. Section 17(c) provides that 50% of contributions due with regard to planning permission for one off houses shall be payable on submission of the Commencement Notice and the remaining 50% within 12 months of the 1st payment due. Section 17(f) provides that where the Council may facilitate the phased payment of development contributions, e.g. under 17(c), the Council may require the giving of security to ensure full payment of contributions.

- 7.2.4 The required development contributions may therefore be calculated as follows, based on the measurements stated in the planning application form on file PL09.239443 and on the requirements of the Contribution Scheme:

Land Use	Area m ²	D.C. Scheme Requirement	Charge €
House	221	Residential development contributions GFA >220 m ² = €20,000 Reduction of €3,600 for providing own waste water treatment. €20,000 - €3,600 = €16,400	€16,400
Stables	149 x 3 = 447	First 600m ² of equine development is exempt.	€0
Horse Walker	179	447+179 = 626m ² total of equine development Area in excess of 600m ² = 26m ² 'Category A' rate = €38 /m ² Reduction of €4.94 /m ² as providing own waste water treatment gives a rate of €33.06 / m ² 26 x €33.06 = €859.56	€859.56
TOTAL			€17,259.56

I note that the PA did not include the horse walker in its calculation of required development contributions and the PA submission on file in response to the appeal states that this aspect of the development is 'exempt' from development contributions. The walker is an unserviced circular area that is partially covered. Section 18 of the Development Contribution Scheme 'Exemptions and Reductions' does not specify any exemption for this type of development. However, given that the structure is unserviced and that this aspect of the development contributions is undisputed, I am happy to omit this charge to give a final figure of €16,400.

7.2.5 I note the following sequence of events and correspondence between the applicant and the PA following the grant of permission on 7th June 2012:

- The applicant submitted a Commencement Notice to the PA on 13th February 2014, stating that the subject development was to commence on 28th February 2014. The PA acknowledged the notice on 6th March 2014.
- The applicant made a payment of €5,000 to the PA on the 2nd September 2014 as part payment for the development contribution required by condition no. 9 of PL09.239443, copy of receipt for same is on file. The PA issued correspondence to the applicant on 19th September 2014 acknowledging this payment and advising that an outstanding balance of €11,674.67 remained (including an annual indexation of €274.67 which was applied to the outstanding sum of €11,400 on 1st September 2014). The letter also stated that under the terms of the 2011-2018 Development Contribution Scheme, 50% of the required development contribution was to be paid on submission of the Commencement Notice, i.e. a shortfall of €3,200 was to be paid immediately.

- The applicant submitted a payment of €7,976 on 21st December 2014, copy of receipt for same is on file. The PA comment states that a response was issued 38 days after receipt of this payment, however there is no record of same on file. The applicant has therefore paid a total of €12,976 to date.
- The PA wrote to the applicant on 12th October 2015 requesting an outstanding balance of €3,698.68 to be paid within one month.
- The applicant wrote to the PA on 12th November 2015 submitting that the required development contribution should be reduced with regard to Circular Letter PS 21/2013, as submitted in the grounds of appeal.
- The PA wrote again to the applicant on 18th November 2015 requiring the outstanding balance of €3,698.68.
- The PA has not issued any letter of compliance for payment of the development contribution required by condition no. 9 of PL09.239443.

7.3 Assessment of Applicant's Case

7.3.1 Having regard to the above calculations and assessment of the Development Contribution Scheme in force when permission was granted for the subject development, I am satisfied that the development contributions have been calculated correctly in accordance with the terms of the Scheme and that the original figure of €16,400 is therefore correct. I note that the PA applied indexation in accordance with the terms of the scheme and as provided for in condition no. 9. This has not been disputed by the applicant and is considered reasonable.

7.3.2 I note that the development contribution required related to the residential aspect of the development only, as the equine element was considered exempt. The total residential development contribution of €20,000 for a house of 221m², as set out in section 11 of the Scheme, included a waste water requirement of €3,600. This was deduced from the required development contribution, as set out above, as the subject development included a private WWTS. Irish Water are now the statutory body responsible for both water supply and waste services since the 1st January 2014. I note that Circular Letter PS21/2013 states:

"In respect of permissions granted under section 34 of the Planning Act granted prior to 1st January 2014, the full development contribution (where such was attached as a condition of planning permission) including, where relevant, the portion in respect of water services infrastructure, must be paid to the planning authority, in accordance with the terms of permission."

The subject permission was granted on 7th June 2012 and was subject to a development contribution in accordance with the terms of the relevant Development Contribution Scheme. It therefore complies with the above

requirement. A deduction was originally applied for waste water treatment and no further deduction should be applied.

7.3.3 Section 29 of the Urban Regeneration and Housing Act 2015 amends section 48 of the Planning Act 2000 by inserting section 48(3A), (3B) and (3C), as set out above. It allows for the retrospective application of a new Development Contribution Scheme which requires lesser contributions than a Scheme that was in force when a permission was granted. Section 48(3A) of the Act provides that the PA shall apply the change of contributions under the following circumstances:

(a) where the development is one to which Part II of the Building Control Regulations 1997 (S.I. No. 496 of 1997) applies and a commencement notice within the meaning of that Part in respect of the development has not been lodged,

Or

(b) where the development comprises houses and one or more of those houses has not been sold,

I note that the applicant submitted a Commencement Notice to the PA on 13th February 2014, therefore section 48(3A)(a) does not apply. I note that the application relates to a one off house rather than 'houses', as specified in section 48(3A)(b). I also note the following statement in the Explanatory Memorandum for the Urban Regeneration and Housing Bill 2015, as quoted by the PA in their comment, which provides background information on the legislation:

"Section 29 amends section 48 of the Act of 2000 by providing that where a new development contribution scheme is adopted by a planning authority to provide for reduced development contributions compared to those which were provided for under the previous scheme, the reduced development contributions under the new scheme shall have retrospective effect in respect of planning permissions granted prior to the date of the adoption of the revised scheme, subject to the development, or part of that development, not having commenced prior to the date of the adoption of the revised scheme.

In order to ensure equitable treatment for housing development where the development is complete but there are unsold housing units, the new lower development contribution scheme will also apply to those unsold housing units. The executive of the relevant planning authority will need to be empowered to amend planning permissions, where the older higher development contributions are specified in the planning permission."

Kildare County Council adopted a revised Scheme on the 5th November 2015, the 2015-2022 Development Contribution Scheme. (I note that the PA submission states that the Scheme was adopted on 3rd December 2015, however the Kildare County Council website states the 5th November 2015). The applicant's referral dated 22nd November 2015 states that the permitted house has been built but not yet occupied, i.e. the development had been completed by that date. The above guidance therefore does not apply in this case.

7.3.4 Section 13 of the 2011-2018 Development Contribution Scheme provides for an annual adjustment of baseline rates on 1st September each year. I note that the PA submission is accompanied by an invoice dated 12th March 2014, which calculates the total amount due to be €16,559.08, with additional allowances for a price index increase. Given that the applicant has paid a total of €12,976 to date, this creates an outstanding amount of €3,583.08. However the PA response to the appeal states that a total of €3,698.68 remains owing. This is based on the figure quoted in the PA letter issued to the applicant on 2nd September 2014, which stated that an outstanding balance of €11,674.68 remained, including annual indexation. Given that the applicant subsequently paid €7,976 to the PA on 21st December 2014, this leaves an outstanding amount of €3,698.68, which tallies with the amount quoted by the PA. This figure is therefore applied in the interests of consistency.

8.0 CONCLUSION

8.1 Having regard to the issues raised in relation to this point of detail, it is considered that the Development Contribution Scheme has been correctly applied in this instance, taking into account the date of the permission on 7th June 2012, the Commencement Notice submitted to the planning authority on 13th February 2014 and the works carried out prior to the adoption of the revised Development Contribution Scheme by Kildare Council on 5th November 2015. I therefore conclude that the PA has correctly applied the Development Contribution Scheme.

RECOMMENDATION

Accordingly, I recommend an Order in the following terms:

WHEREAS by order dated the 7th day of June, 2012 An Bord Pleanála, under appeal reference number PL09.239443, granted subject to conditions a permission to Martin Nolan care of Vincent JP Farry and Company Limited of Suite 180, 28 South Frederick Street, Dublin for development consisting of the construction of a dormer dwelling, three number stable blocks, sand arena, covered horse walker, dung stead, on-site effluent treatment system, percolation

area, surface water to soakways and all associated site works at Ballysax Little, The Curragh, County Kildare:

AND WHEREAS condition number 9 attached to the said permission required the developer to 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, as amended. The contribution was to be paid prior to commencement of development or in such phased payments as the planning authority may have facilitated and to be subject to any applicable indexation provisions of the Scheme at the time of payment and the condition required that details of the application of the terms of the Scheme were to be agreed between the planning authority and the developer or, in default of agreement, the matter to be determined by An Bord Pleanála:

AND WHEREAS the developer and the planning authority failed to agree on the said details of the application of the terms of the Scheme in compliance with the terms of the said condition and the matter was referred by the developer to An Bord Pleanála on the 6th day of April, 2016 for determination:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, and based on the Reasons and Considerations set out below, hereby determines that the planning authority correctly applied the terms and conditions of the Development Contribution Scheme 2011-2018 and that the outstanding contribution required to be paid in respect of An Bord Pleanála appeal reference number PL09.239443 should be €3,698.68.

REASONS AND CONSIDERATIONS

Having regard to:

- a) the submissions on file;
- b) the documentation attached to An Bord Pleanála appeal reference number PL09.239443;
- c) the Kildare County Council Development Contribution Scheme 2011-2018 and to the Exemptions and Reductions set out therein and, in particular, to the provisions under section 11 relating to residential development contributions;
- d) the payments already made to Kildare County Council by the applicant;

f) sections 48(3A), (3B) and (3C) of the Planning and Development Act 2000 (as amended);

g) the recommendations of the Urban Regeneration and Housing Bill 2015 Explanatory Memorandum;

the Board considered that the Planning Authority has correctly applied the relevant section 48 Development Contributions Scheme in this instance.

Sarah Moran
Senior Planning Inspector
10th March 2016