



An
Bord
Pleanála

Inspector's Report PL16.RP2132

Development	Point of detail regarding Condition No. 20 of PL16.245266 at 5 Beechpark, Claremorris, Co. Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	14/373
Applicant(s)	MCOB Developments
Type of Application	Permission
Planning Authority Decision	Grant
Appellant(s)	First Party
Observer(s)	None
Date of Site Inspection	N/A
Inspector	Lorraine Dockery

1.0 **Site Location and Description**

- 1.1. The appeal site is located on the northern periphery of Claremorris, Co. Mayo to the east of the N60 national secondary route.

2.0 **Proposed Development**

- 2.1. The development permitted under PL16.245266 pertains to the construction of 10 houses and the retention and completion of a multi-unit (8 no. units) residential block at Beechpark, Claremorris, Co. Mayo

3.0 **Planning History**

- 3.1. 14/373 (PL16.245266)

Permission GRANTED for 10 houses and the retention and completion of a multi-unit residential block at Beechpark, Claremorris, Co. Mayo

P02/836 (PL16.221129)

Permission granted for revised layout to residential development. Special contribution was the subject of the first party appeal. This condition was omitted by the Bord.

4.0 **Development Plan**

- 4.1. The Mayo County Development Plan 2014-2020 is the operative County Development Plan for the area.
- 4.2. **Development Contributions, Guidelines Issued by Department Of Environment, Heritage And Local Government January 2013**
- 4.3. These Guidelines provide guidance for Planning Authorities in the preparation of development contribution schemes and promote sustainable development patterns,

economic activity and to securing investment in capital infrastructure and economic activity.

4.4. Chapter 2 provides provide specific requirements that planning authorities are required to include in the development contribution schemes.

4.5. **Development Contribution Scheme**

4.6. A copy of the adopted Development Contribution Scheme for Mayo County Council is attached to the file for reference. This Scheme is effective in respect of permissions granted from February 5th 2007. Indexation of Development Levies under the Development Contribution Scheme 2004 took place from December 31st 2006.

4.7. Schedule 1, Section 1 Residential applies to the subject development.

4.8. Of note Paragraph 4 sets out the following:

Reduced Contribution

4.1 Mayo County Council at its own and absolute discretion, may allow the payment of a reduced contribution where the payment of the contribution would not be just and reasonable having regard to any of the following-

(a) the limited extent of the development

(b) the limited cost of the development

(c) other exceptional considerations

4.2.1 The amount payable for any reduced contribution under this section shall be not less than one quarter of the amount indicated in column 2 of Schedule 1 opposite the mention of the relevant class of the contribution in column 1.

4.3 A decision to allow a reduced contribution under this section of the Development Contribution Scheme shall contain a statement specifying the reasons for the decision.

4.9. Paragraph 9 sets out the following:

Refund of Contributions attached to an Existing Permission

If works specified in a condition or undertaking attached to an existing permission, to be carried out by Mayo County Council, are not commenced within 5 years or completed within 7 years of the receipt of payment, or where Mayo County Council decided not to proceed with the works or part of the works, the applicant shall be entitled to a refund of the Contribution. Such refund shall be proportionate to the work not carried out and shall include any interest accrued over the period while held by Mayo County Council.

5.0 The Appeal

5.1. Grounds of Appeal

The grounds of appeal regarding this point of detail are summarised as follows:

- Agreement has not and cannot be reached regarding the application of the terms of the Scheme for development contributions
- Relates specifically to Condition No. 20
- Requests that the Bord examine the above Condition and apply appropriate contribution level to this development being cognisant of the fact that in a prior lapsed planning application, the full requirements of the contribution payment had been met, despite the fact that the development did not take place
- Current planning application simply revives or replaces units not built under that prior planning grant with some minor alterations
- Now less units than were paid for in full, under the terms of the contributions demanded for that prior application

- Have made an offer of €250 per unit, which was rejected by the planning authority with a demand as follows:
 - €11324 for surface water
 - €6783 for amenities
 - €6783 for community open space and recreational facilities
 - €28861 for public roads
 - €4522 for public footpaths
 - €5700 towards the taking over of the housing development by Mayo County Council
- This totals €63,973 which is exactly the figure as required as per the original grant of P14/373 by the planning authority
- Clear that there was to be some discussion, debate and compromise as per wording of Condition No. 20 of the ABP decision and the terms of the Scheme
- Requests that due consideration be given that the developer has already paid for these units and more
- Also points out that there have been no significant infrastructural or amenity upgrades in the area since that money was paid

5.2. Planning Authority Response

A response of the planning authority may be summarised as follows:

- Condition No. 20 clearly stated that the financial contribution should be “in accordance with the terms of the Development Contribution Scheme” made under Section 48 of the Planning and Development Act 2000
- In this regard, Mayo County Council had no option but to restate the contributions clearly stipulated by the Mayo County Council Development

Contributions Scheme 2004- current Development Contribution Scheme for Mayo

- Not possible to condition any level of contribution other than that stipulated by the current Scheme- Planning Authority did this in the decision of P14/373 and also on foot of ABP decision PL16.245266- to do otherwise, would in their opinion have been ultra vires
- The argument that one should offset contributions from a previous, expired decision against a new permission is unprecedented and untenable
- Any issues with regard a previous permission should be dealt with under that permission
- Refutes claims by referrer that full requirements of the contribution payments had been met and states that a cash deposit of €264,000 for that permission was not paid- estates has not been finished and residents have been living there for past 8-10 years- the absence of the conditioned cash deposit meant that no progress was made in improving the conditions within the estate for the residents
- Do not believe that it is clear that there was to be some discussion or compromise in this regard, having read the Inspectors Report of PL16.245266
- Considers that wording was left intentionally vague as Inspector believed that planning authority had underestimated the contributions due
- Considers that the Inspector was incorrect in his calculations- by excluding contributions for water and sewer, as is the case since 01/01/14, the figure imposed by the planning authority of €63,973 is correct
- Considers it safer and clearer to simply multiply each category of contribution by the number of houses proposed- Mayo County Council Development Contribution Scheme follows this format

- Hopes it is still the case that ABP has no flexibility with regard to implementing the financial contribution scheme

5.3. **Other Party Responses**

A response from the referrer may be summarised as follows:

- Currently no valid framework for contributions in Mayo, at least not at the time of the application of these contribution requirements on this planning application
- Considers that the document supplied by the Council during the original appeal process does allow for the Council to alter the contribution request in cases of mitigating circumstances- considers that the previous payment of contributions of a greater number of houses should count as a good enough reason to alter the Scheme
- Have offered a sum per house already which was not acknowledged by the Council
- States that the referrer has paperwork to show that there was agreement with the Council regarding the monies the Council claims were not paid in their submission

5.4. **Observations**

5.5. None

6.0 **Assessment**

6.1. 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. The referral to the Board has been made following a failure to reach agreement regarding the “amount of the contribution”

payable to the planning authority. Thus in effect the implication is that it is being made as a referral on a 'point of detail' under Section 34(5) of the Planning and Development Act, 2000, as amended by Section 6 of the 2002 Act. It is noted that Section 34(5) states

'The conditions under subsection (1) may provide that points of detail relating to any grant of permission may be agreed between the planning authority and the person to whom the permission is granted and that in default of agreement the matter is to be referred to the Board for determination'.

- 6.2. It would appear from the information on file that negotiations have ensued in the intervening period with no prospect of agreement. I note that the Board is constrained to consideration of what amount of contribution is reasonable as it relates to the development.
- 6.3. The current application seeks clarification regarding a point of detail regarding financial contribution condition No. 20 of PL16.245266. Condition 20 of PL16.245266 reads as follows:
- 6.4. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting 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 shall be paid prior to the commencement of the 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

- 6.5. The points made by the referrer in the point of detail are noted. It appears from the information before me that a financial contribution was paid in respect of a previous application site, which has now expired. No details have been included with regards this application, aside from those outlined above including no details of Reg. Ref. No, exact breakdown of levies paid or any other relevant information. This current application sought planning permission for a total of 18 residential units, which was reduced to 11 by the Planning Authority but reinstated to 18 no. by An Bord Pleanála. I refer the Bord to PL16.245266 to which this point of detail refers and note that many of the issues raised therein in relation to the payment of the development contribution form the basis of this point of detail. This issue was dealt with by the Inspector in his report who states that:

'It appears that a financial contribution levy would be required in this instance as the proposal relates to a new application subsequent to an application which has now expired and as such a development contribution levy in accordance with the adopted contribution scheme would apply. There are no exemptions or waivers set out in the Development Contribution Scheme in respect of subsequent applications such as that before the Board in this instance. It is my opinion therefore that the Board has no option but to apply the Development Contribution Scheme as adopted by Mayo County Council'.

- 6.6 I would concur with this statement and consider that nothing has changed in the interim for the above not to remain valid. The Development Contribution Scheme remains the same and there remains no exemptions or waivers set out in the Development Contribution Scheme in respect of subsequent applications. I acknowledge the point made by the referrer in this regard but consider it is outside the remit of this point of detail to address this. I note Paragraph 4 (c) of the

Development Contribution Scheme which refers to the payment of a reduced contribution in exceptional circumstances. I am of the opinion that a sufficient argument has not been made for the payment of a reduced contribution in this instance. There may be provision for the referrer to get some level of refund for levies paid on a previous application under Paragraph 9 of the Scheme, as adopted. However, this is a matter between the referrer and the planning authority, outside the remit of this current file. I concur with the opinion of the planning authority that any issues with regard to a previous permission should be dealt with under that permission.

- 6.7 I would concur with the response of the planning authority that it is not possible to condition any level of contribution other than that stipulated by the current scheme. I concur that to do otherwise would be ultra vires. I also consider that the wording of Condition no. 20, as attached to An Bord Pleanála is clear and concise and would be of the opinion that it was not intended to allow for discussion, debate or compromise, as was suggested by the referrer.
- 6.8 On this basis, I consider it appropriate for the referrer to pay development contributions as per the adopted Development Contribution Scheme, 2004. I note that an Indexation of the Scheme was adopted on December 31st 2006. I also note that contributions for water and sewer are no longer payable under this Scheme as from 01/01/14 these contributions are imposed directly by Irish Water. The Planning Authority in their submission highlights the fact that the Inspector in calculating the appropriate development levy included in his calculations the figure for water and sewage. These figures of €1191 and €1787 per unit should have been omitted.
- 6.9 The referrer has offered a payment of €250 per unit, which for 18 units equates to €4500. As has been stated above, there is no provision for such deviation from the adopted Development Contribution Scheme.
- 6.10 There seems to be some confusion with regards the number of units permitted with the planning authority calculating a figure based on 19 units. It is stated in the

Inspectors Report of PL16.245266 that this figure is 18 no. units. It is my opinion that the total number of units permitted in this development appears to be 18 no., namely 10 houses and 8 apartments. The Planning Authority consider that a total of €63,973 should be paid in development levies. However, my calculation works out at €62,795, namely €3305 x 18 units. I consider that this is the level of contribution payable in this instance.

7.0 Recommendation

7.1 It is recommended that the Board determine that Mayo County Council are correct in applying development contributions in accordance with the adopted Development Contribution Scheme and that the level to be applied in order to comply with Condition No. 20 of PL16.245266 is €62,795.

8.0 Reasons and Considerations

It is noted that

- (i) the contributions sought in respect of File Ref. No. PL16.245266 remain outstanding, and
- (ii) the provisions of the Development Contribution Scheme adopted on the 1st day of March 2004 apply and there are no exemptions or waivers set out in the Development Contribution Scheme in respect of subsequent applications such as that before the Bord in PL16.245266
- (iii) the case made for the payment of a reduced contribution under Paragraph 4.1(c) is not considered to apply
- (iv) the Bord have no option but to apply the Development Contribution Scheme as adopted by Mayo County Council

8.1 Having regard to the above, it is considered that the developer should pay €62,795.00 in compliance with Condition No. 20 of PL16.245266.

Lorraine Dockery

Planning Inspector

17/11/2016