



An  
Bord  
Pleanála

## Inspector's Report 15.RP2133

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<b>Development</b>	Point of detail in relation to Conditions 5 and 6 of Planning Ref. No. 04/441
<b>Location</b>	Haggardstown, Dublin Road, Dundalk, Co. Louth
<b>Planning Authority</b>	Louth County Council
<b>Planning Authority Reg. Ref.</b>	04/441
<b>Referral</b>	
Referral Type	Point of detail referral
Referred by	Furniture Link International
Owner/Occupier	Furniture Link International
<b>Inspector</b>	Niall Haverty

## 1.0 Introduction

1.1. This case is a referral under section 34(5) of the Planning and Development Act 2000, as amended. It was received by the Board from Furniture Link International, and concerns a point of detail regarding Conditions 5 and 6 attached to a grant of planning permission issued by Louth County Council (Reg. Ref. 04/441). Both Conditions relate to development contributions.

## 2.0 Background to Referral

2.1. In July 2004 Louth County Council granted planning permission to John McCann under Reg. Ref. 04/441 for a distribution facility with an attached two storey office block and associated car and lorry parking, provision of access roads etc.

2.2. Conditions 5 and 6 of the permission relate to the payment of development contributions, and read as follows:

5. The developer shall pay a contribution to the Planning Authority, in the amount specified below (or such increased amount as may be appropriate at the time of payment) towards the costs already incurred or to be incurred by the Planning Authority on the provision of each of the public services listed below, which will facilitate the proposed development. Unless otherwise agreed with the Planning Authority before development is commenced the said contribution shall be paid in full before such commencement-

a) Road improvements	-	€421,080.00
b) Sanitary services	-	€131,772.96
c) Water Supply	-	€131,772.96

**Reason:** The provision of these facilities in the area will facilitate the proposed development and it is considered reasonable that the developer should contribute towards their cost.

6. The developer shall pay a contribution to the Planning Authority, in the amount specified below (or such increased amounts as may be appropriate at the time of payment) towards the cost of provision of the various community, recreational and amenity facilities which are included as development

objectives in the Council's Development Plan for the area. Unless otherwise agreed in advance with the Council this contribution shall be paid in full before any development is commenced.

Community, Recreational and Amenity Facilities - €200,155.20

**Reason:** The provision of these facilities will facilitate the proposed development and it is considered reasonable that the developer should contribute towards the cost of same.

2.3. The development permitted under Reg. Ref. 04/441 was to take place on lands which formed part of a larger c. 41 ha site for which planning permission was granted to Xerox Europe Ltd. for site development works under Reg. Ref. 98/986. Conditions 5, 8, 10 and 19 of permission Reg. Ref. 98/986 required the payment of both unspecified and specified development contributions towards the costs of upgrading public water, foul drainage, surface water drainage and roads infrastructure.

### 3.0 The Referral

#### 3.1. Referrer's Case

3.1.1. The Referrer's case can be summarised as follows:

- Level of contributions imposed under Reg. Ref. 04/441 has been the source of grave concern to the referrer over the years. Planning Authority was unreasonable in applying financial conditions, erred in doing so and failed to conclude an agreement.
- Planning Authority failed to have regard to relationship between Reg. Ref. 04/441 and Reg. Ref. 98/986, which is the parent permission for the industrial park.
- No contributions for roads, water or drainage should have been attached to Reg. Ref. 04/441 as all public infrastructure was provided through financial contributions attached to Reg. Ref. 98/986 which have been discharged.
- Contributions amount to double charging, which is contrary to Department Circular Letters and Guidelines for Planning Authorities.

- When calculating the development contributions under Reg. Ref. 04/441, a reduction should have been made to account for previous payments under parent permission.
- Referrer interpreted Conditions 5 and 6 as allowing the level of contributions to be agreed with the Planning Authority and was surprised that Planning Authority would not reduce contributions by way of agreement.
- Following protracted engagement with the Planning Authority, the referrer paid the development contributions in instalments.
- Subsequent to the grant of permission for Reg. Ref. 98/986, numerous permissions were granted within the industrial park. Some of the permissions were granted under 1963 legislation, and included contributions for piped services only.
- Department Circular Letters state that double charging is inconsistent with both the primary objective of levying development contributions and the spirit of capturing planning gain in an equitable manner, and it follows that levies paid in error should be refunded.

### **3.2. Planning Authority's response**

3.2.1. The Planning Authority's response can be summarised as follows:

- The Board is requested to clarify the eligibility of the applicant to make this referral, 12 years after permission was granted and 8 years after the last contribution was paid.
- The only development contributions levied in respect of the parent site development permission (Reg. Ref. 98/986) was £100,000 for the connection of the site to the public foul sewer network. The Planning Authority cannot confirm if conditions 5 or 8 of that permission were complied with, as the Dundalk Urban District Council records cannot be verified.
- Subsequent planning applications for the buildings on the Xerox site were subject to development contributions, although they predated the 2004 Development Contribution Scheme.

- It is common practice not to levy contributions in respect of site development works, and to levy contributions on the basis of the subsequent buildings on the site.
- The interpretation of the 'agreement' referred to in Conditions 5 and 6 is incorrect. The agreement relates to the timing of payments, not the amount of payment. The development contributions were calculated on the basis of the rates set out in the County Louth Development Contribution Scheme 2004.
- The Planning Authority is aware of the Department's Circular Letters and does not accept that any double charging occurred. The applicant purchased a serviced site, but contributions were payable in respect of any future development on that site.
- The earlier permission Reg. Ref. 98/986 related to site development works on a 41 hectare site and it was clear that subsequent development was envisaged.
- Development contributions are a levy towards the cost of providing public infrastructure/services within the area, and not just the serviced site.
- The contributions received have been expended at this stage.

3.2.2. The Planning Authority has provided a considerable amount of documentation, regarding correspondence to and from the referrer over a number of years, as well as internal correspondence.

3.2.3. The Planning Authority also provided a copy of a letter dated 1<sup>st</sup> December 2010 to the referrer's solicitors which confirmed that all financial conditions attached to permission Reg. Ref. 04/441 have been fully complied with.

## 4.0 Planning History

### 4.1. Reg. Ref. 04/441

4.1.1. Planning permission was granted to John McCann in July 2004 for a distribution facility (16,287 sq m) with an attached two storey office block (1,214 sq m) and associated car and lorry parking, provision of access roads etc.

## **4.2. Reg. Ref. 98/986**

4.2.1. Planning permission was granted to Xerox Europe Ltd. for site development works on a c. 41 ha site. These works included earthmoving, landscaping, fencing, surface and foul drainage and water supply infrastructure and road construction. The stated purpose of the site development works was to facilitate a future manufacturing campus for Xerox Europe Ltd. but no buildings formed part of the development proposal.

## **5.0 Policy Context**

### **5.1. County Louth Development Contribution Scheme 2004**

5.1.1. This was the Development Contribution Scheme that was in place when Louth County Council granted permission for planning application Reg. Ref. 04/441.

5.1.2. Section 6 states that, when granting a planning permission, Louth County Council will include conditions requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the functional area of the Planning Authority.

5.1.3. The levels of contribution for non-residential development are set out in Table 4 of the Scheme. Section 9(b) states that contributions shall be payable prior to commencement of development or as otherwise agreed by the County Council.

5.1.4. A number of exemptions are set out in Section 8 of the Scheme, none of which are relevant to this case.

### **5.2. Development Contributions Guidelines for Planning Authorities 2013**

5.2.1. The guidelines state that the practice of “double charging” is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing “planning gain” in an equitable manner. It reminds Planning Authorities that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution.

### 5.3. Department Circular Letters PD 4/2003 and PD 5/2007

5.3.1. Both circular letters contain guidance on the preparation and application of development contribution schemes. Circular letter PD 5/2007 contains a similar statement regarding double charging as the Development Contributions Guidelines for Planning Authorities 2013.

## 6.0 Assessment

### 6.1. Summary of Facts

6.1.1. Having reviewed the documentation submitted by both the referrer and the Planning Authority, I consider that the key facts of the case may be summarised as follows:

- Conditions 5 and 6 of Reg. Ref. 04/441 required specified development contributions to be paid. Both conditions stated that, unless otherwise agreed with the Planning Authority, the said contribution shall be paid in full before commencement.
- The referrer paid the development contributions to the Planning Authority on a phased basis over a number of years.
- The Planning Authority, in a letter dated 1<sup>st</sup> December 2010, confirmed to the referrer's solicitors that all financial conditions attached to Reg. Ref. 04/441 have been fully complied with.

6.1.2. On the basis of the facts set out above, it could be considered that no failure to reach agreement applies in this instance and the provisions of section 34(5) do not apply. In this case the Board may consider that the referral is not valid. However, should the Board consider otherwise, I set out below my assessment of the case.

### 6.2. Nature of Referral

6.2.1. Section 34(5) of the Planning and Development Act 2000, as amended, states that conditions may provide that points of detail relating to a grant of permission may be agreed between the planning authority and the person carrying out the development; if the planning authority and that person cannot agree on the matter the matter may be referred to the Board for determination.

- 6.2.2. Having reviewed the conditions which form the basis of the dispute, I concur with the Planning Authority that the agreement referred to in Conditions 5 and 6 is only in relation to the phasing of payments. The amount to be paid is clearly specified in both Conditions and the referrer has not provided any evidence to suggest that the level of contributions calculated by the Planning Authority were not in accordance with the County Louth Development Contribution Scheme 2004. Furthermore, the Scheme does not make any provision for the subsequent alteration or reduction of development contributions following a grant of permission.
- 6.2.3. While it is clear from the documentation provided by the Planning Authority that there was an extended and complex history to the payment of the contributions, the letter from the Planning Authority to the applicant's solicitor dated 1<sup>st</sup> December 2010 indicates that all financial conditions attached to Reg. Ref. 04/441 have been fully complied with.
- 6.2.4. Since the Board's remit under section 34(5) is limited to the matter requiring agreement, which in this instance is the phasing of payments, I therefore consider that there is no point of detail in respect of Conditions 5 and 6 that requires further assessment, as the phasing of payments is no longer relevant due to all financial contributions having been discharged in full to the satisfaction of the Planning Authority.

### 6.3. **Double Charging**

- 6.3.1. Notwithstanding the above assessment regarding the nature of the referral, if the Board is minded to consider this matter further, I consider that the issue of 'double charging' is central to the referrer's case.
- 6.3.2. The development contributions imposed under Reg. Ref. 98/986 related solely to site development works for a 41 hectare site, to accommodate the future development of a manufacturing campus for Xerox Europe Ltd. Since that permission related solely to civils and related works to facilitate future development and did not include any buildings, I do not consider that the subsequent planning applications for buildings within the industrial site should be subject to reduced or no contributions. As noted by the Planning Authority, development contributions are intended to provide public infrastructure and services within the area and not just on the site itself. I also note



that the referrer was not the developer of permission Reg. Ref. 98/986 and does not appear to have been the party that paid the contributions imposed under that permission.

6.3.3. If the referrer considered that the terms of the County Louth Development Contribution Scheme had not been correctly applied, then the appropriate course of action would have been to submit an appeal against the development contributions imposed under Reg. Ref. 04/441. No such appeal was lodged at the time, and having regard to the drafting utilised in Conditions 5 and 6, I do not consider it open to the referrer to query the imposition of the specified sums at this stage. To reiterate, the only matter open for agreement between the referrer and the Planning Authority was the phasing of payments, not their quantum.

## 7.0 Conclusion and Recommendation

7.1. Having regard to the issues raised in relation to this point of detail, I consider that the Planning Authority correctly applied the terms of the Development Contribution Scheme and that, due to the payment in full of all financial contributions levied under permission Reg. Ref. 04/441, there is no outstanding point of detail that comes within the Board's remit. Accordingly, I recommend an Order in the following terms:

**WHEREAS** by Notification of Grant of Permission dated the 21st day of July 2004 Louth County Council granted, subject to conditions, permission to John McCann of Roden House, Roden Place, Dundalk, Co. Louth for a distribution centre with an attached two storey office block and associated development at Haggardstown, Dublin Road, Dundalk, Co. Louth.

**AND WHEREAS** condition numbers 5 and 6 attached to the said permission required the developer to pay to the planning authority specified financial contributions towards the cost of provision of public services and community, recreational and amenity facilities. The specified contributions were to be paid in full prior to commencement of development unless otherwise agreed with the Planning Authority.

**AND WHEREAS** the developer, Furniture Link International of Dundalk Logistics Park, Dublin Road, Dundalk, Co. Louth and the planning authority failed to reach agreement in respect of condition numbers 5 and 6 and the matter was referred by

the developer to An Bord Pleanála on the 12th day of August, 2016 for determination;

**AND WHEREAS** the planning authority in a letter dated the 1st day of December, 2010 to the developer's solicitors stated that all financial conditions attached to permission Reg. Ref. 04/441 have been fully complied with;

**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, which makes no provisions for refunds or reductions in contributions following a grant of permission, and furthermore as all contributions have been paid in full to the satisfaction of the Planning Authority there is no other matter under condition numbers 5 and 6 which requires agreement and which comes within the remit of the Board under section 34(5) of the Planning and Development Act 2000, as amended. Any other issues perceived to arise are beyond the remit of the Board.

## 8.0 Reasons and Considerations

Having regard to:

- a) sections 34(5) and 48 of the Planning and Development Act 2000, as amended,
- b) the County Louth Development Contribution Scheme 2004, which requires payment prior to commencement of development or as otherwise agreed by the Planning Authority
- c) Louth County Council's grant of permission under Reg. Ref. 04/441, including conditions 5 and 6 of that grant of permission, and
- d) the submissions on file, and the planning history of the site

the Board is satisfied that the terms of the Development Contribution Scheme have been correctly applied by the planning authority and that as all contributions have been paid in full to the satisfaction of the Planning Authority there is no other matter under condition numbers 5 and 6 which requires agreement and which comes within

the remit of the Board under section 34(5) of the Planning and Development Act 2000, as amended.

## 9.0 **Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

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Niall Haverty  
Planning Inspector

20<sup>th</sup> January 2017