



An  
Bord  
Pleanála

## Inspector's Report RP17.RP2135 (Referral - Point of Detail)

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<b>Development</b>	Point of Detail regarding Condition No.10 of PL17.246042
<b>Location</b>	Loughlinstown, Ratoath, Co.Meath.
<b>Planning Authority</b>	Meath County Council
<b>Planning Authority Reg. Ref.</b>	AA/150544
<b>Applicant(s)</b>	John Coyle
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission with conditions
<b>Type of Appeal</b>	First Party v Condition No. 10 (Point of Detail)
<b>Appellant(s)</b>	John Coyle (first party)
<b>Observer(s)</b>	N/A
<b>Date of Site Inspection</b>	N/A
<b>Inspector</b>	Patricia Calleary

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## 1.0 Introduction

- 1.1. **RP17.RP2135** is a referral under Section 34(5) of the Planning and Development Act, 2000, received by the Board from Declan Brassil & Company Ltd, acting on behalf of the applicant, John Coyle. It concerns a point of detail regarding Condition No.10, a financial contribution condition, attached to the Board's order under ABP Ref: PI17.246042.

## 2.0 Background to Referral

- 2.1. Under PL17.246042, An Bord Pleanála granted permission subject to 10 conditions for development for the carrying out of land reclamation works by way of importing inert material over an area of 3.16 hectares at Loughlinstown, Rathoath, Co.Meath.
- 2.2. Condition No.10 of the Board's order included a standard unspecified S.48 development contribution which read as follows:

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, as amended. The contribution shall be paid prior to 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 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.

### **3.0 The Referral**

#### **3.1 Applicant's Case**

3.1.1. It is the applicant's contention that the Board's Order did not include a special contribution element in Condition No.10 and that this condition cannot therefore be interpreted to include a special contribution. The applicant has requested the Board to clarify that Condition No.10 relates to a contribution under Section 48(2)(a) only and does not include €20,000 as levied by Meath County Council requiring a special contribution under section 48(2)(c) of the Planning and Development Act, 2000, as amended.

3.1.2. The applicant's referral received by the Board on 21st September 2016 included a copy of correspondence which they received from the Planning Authority. The following points are put forward in that correspondence:

- PA consider a special contribution of €20,000 is warranted in respect of the provision of a footpath along the L-5015-0 from the junction to St. Andrew's housing estate and to upgrade the existing storm water drainage at the junction;
- The Condition attached by the Board allows scope for a special contribution under Section 48(2)(c);
- Section 4.2 of the Meath County Council's Development contribution scheme 2016-2021 provides for special contributions.

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

3.2.1. An initial response from the Planning Authority was received by the Board on 11th October 2016 in which it stated that they had nothing further to add.

3.2.2. Following a Section 132 request from the Board to the Planning Authority, a response was provided accompanied by a copy of the planners report and a copy of

an internal email from the strategic transportation unit. The following was put forward:

- A special contribution is required for the footpath along the L-50161-0 from the junction to St. Andrews housing estate and to upgrade the existing storm water drainage system at the R150/L-50161;
- Estimate cost to construct the above is €20,000.

## 4.0 Planning History

Apart from the Board's order (RP17.RP2135 / Planning Ref: AA150544 ) which included Condition No.10, the following planning history relates to the site.

- PL 17. 215615 / DA 50400

On 23<sup>rd</sup> August 2006 **the Board refused permission** on appeal for the carrying out of land recovery operations;

- PL 17. 129591 / DA 20014

On 22<sup>nd</sup> October 2002 **the Board granted permission** on appeal for the importing of inert solid and topsoil for the purpose of land recovery;

- RL 17.RL2213 / DAS54006

On 4<sup>th</sup> May 2005, the Board **determined a referral** that the 'importation of soil and top soil for deposition and spreading on existing lands **is development and is not exempted development.**

## 5.0 Policy Context

### 5.1. Local Planning Policy

The proposed development is governed by the policies and provisions contained in the **Meath County Development Plan 2013-2019**. Section 4.4 of the Development plan recognises the importance of agriculture as a component of County Meath's economy. There are no specific objectives in the plan regarding land reclamation or recovery.

## 5.2. Meath Development Contribution Scheme 2016-2021

**Section 4** (Types of Conditions): The Act provides for three types of development contributions that may be attached as conditions to grants of planning permission:

- i. General Development Contributions
- ii. Special Development Contributions
- iii. Supplementary Development Contributions

**Section 4.1** sets out detail in relation to **general development contributions**.

**Section 4.2** sets out details in relation to **special development contributions**.

Specifically, it provides that a Planning Authority may require the payment of a special contribution in addition to the terms of the general development contribution scheme in respect of a particular development **where specific costs not covered by a scheme** are incurred by the Local Authority for public works **which directly benefit the development**. It also states that the PA must specify in a planning condition attached to the grant of permission, the particular works carried out, or proposed to be carried out, to which the contribution relates. Where special contributions arise, they would be based on the actual cost of works carried out or estimated cost of proposed works.

## 5.3. Development Contributions – Guidelines for Planning Authorities 2013

5.3.1. These guidelines were issued under section 28 of the PDA 2000 (as amended) with a stated aim to provide guidance on the drawing up of development contributions to reflect radical economic changes.

5.3.2. Chapter 1 provides guidance on Special Contributions as follows:

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.

## 6.0 **Assessment**

### 6.1. **Consideration of Condition No.10**

- 6.1.1. The applicant contends that the Board's Order referred to general contributions and did not include a special contribution element in Condition No.10 and that this condition cannot therefore be interpreted to include a special contribution. The Planning Authority on the other hand consider that the Condition attached by the Board allows scope for a special contribution under Section 48(2)(c).
- 6.1.2. The wording of the condition attached is specific in its reference to the financial contribution in respect of public infrastructure and facilities benefiting the development in accordance with the terms of the Development contribution scheme made under Section 48 of the Planning and Development Act 2000, as amended.
- 6.1.3. Special contributions can only be applied where specific exceptional costs are incurred in respect of very specific requirement to facilitate a development. These costs would need to be exceptional and incurred for the provision of public infrastructure or facilities which fall outside of the normal general contribution scheme. Notwithstanding Condition 8 of the Planning Authority's decision which included a special contribution for road improvements, the Board, in deciding on the appeal, did not repeat the special contribution condition in the schedule of conditions attached to the Board order. In my assessment of this referral, I consider the works listed in Condition No.8 attached to the planning decision, i.e. 'road improvement works' are works which are capable of being covered in the normal development contribution scheme under S48(2)(a), where such a scheme would be applicable.
- 6.1.4. Where a special contribution is applicable, the Planning Authority (and by way of extension the Board) would be required to specify in a planning condition attached to the grant of permission, the particular works carried out, or proposed to be carried out, to which the special contribution relates, based on the actual cost of works carried out or estimated cost of proposed works. No such works were specified under Condition No.10 attached to the Boards Order under PL17.246042.

- 6.1.5. Having regard to the foregoing, it is clear that Condition No.10 relates to Section 48(2)(a) of the PDA Act 2000, as amended and cannot be interpreted as a special contribution under Section 48(2)(c) of the same Act.

## 7.0 Conclusion and Recommendation

- 7.1. Having regard to the issues raised in relation to this point of detail, it is considered that Condition No.10 relates to a contribution under Section 48(2)(a) only and does not include any provision for a special contribution or the payment of €20,000 under Section 48(2)(c). Accordingly, I recommend an Order in the following terms:

**WHEREAS** by order dated the 23rd day of May, 2016 An Bord Pleanála, under appeal reference number PL 17.246042, granted subject to conditions a permission to John Coyle care of Declan Brassil and Company Limited of Lincoln House, Phoenix Street, Smithfield, Dublin for development comprising land reclamation works over an area of approximately 3.16 hectares comprising of the importation of inert soil (approximately 96,700 tonnes); and the redistribution of approximately 1,300 tonnes of soil from part (0.35 hectares) of the adjoining previously permitted reclamation area (planning register reference number DA/20014, appeal reference number PL.17.129591) to reduce the finished ground level in that part of the reclaimed area by approximately 0.2 metres. The increase in ground level on the proposed reclamation area is approximately 1.8 metres. The proposed development also includes for the repair and reinstatement of existing internal haul road; creation of a hard standing area of approximately 135 square metres surrounded by a 0.45 metres high wall; reinstatement of an existing (currently unused) wheel wash and relocation of existing container on site and temporary use as site office at Loughlinstown and Kilbrew, Ratoath, County Meath.

**AND WHEREAS** condition number 10 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. 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 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 21<sup>st</sup> day of September, 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 Condition No.10 relates to a contribution under Section 48(2)(a) only and does not include any provision for a special contribution or the payment of €20,000 under Section 48(2)(c).

### **Reasons and Considerations**

Having regard to Section 48 of the Planning and Development Act 2000, as amended, special contributions can only be applied where specific exceptional costs are incurred in respect of very specific requirement to facilitate a development incurred for the provision of public infrastructure or facilities which would fall outside of the normal general contribution scheme. Where a special contribution is applicable, the Planning Authority (and by way of extension the Board) would be required to specify in a planning condition attached to the grant of permission, the particular works carried out, or proposed to be carried out, to which the special contribution relates based on the actual cost of works carried out or estimated cost of proposed works. No such works were specified under Condition 10. Having regard to the foregoing, the Board can clarify that Condition No.10 relates to Section 48(2)(a) of the PDA Act 2000, as amended and do not relate to special contribution under Section 48(2)(c) of the same Act.

## **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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Patricia Calleary  
Senior Planning Inspector

22 November 2016