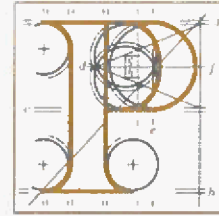


Our Case Number: ABP-314834-22

Planning Authority Reference Number: 2260121

Your Reference: Miltown Composting Systems Ltd



An
Bord
Pleanála

Walsh + Walsh Architects
The Square
Cahir
Co. Tipperary

Date: 05 DEC 2023

Re: Reconstruction and extension of agricultural buildings with associated site works. An EIAR accompanies this application.
Milltownmore, Fethard, Co. Tipperary

Dear Sir / Madam,

An order has been made by An Bord Pleanála determining the above-mentioned matter under the Planning and Development Acts 2000 to 2022. A copy of the order and Board Direction is enclosed.

In accordance with section 146(5) of the Planning and Development Act 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to any matter falling to be determined by it, within 3 days following the making of its decision. The documents referred to shall be made available for a period of 5 years, beginning on the day that they are required to be made available. In addition, the Board will also make available the Inspector's Report, the Board Direction and Board Order in respect of the matter on the Board's website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The Public Access Service for the purpose of inspection/purchase of file documentation is available on weekdays from 9.15am to 5.30pm (including lunchtime) except on public holidays and other days on which the office of the Board is closed.

A further enclosure contains information in relation to challenges by way of judicial review to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

Yours faithfully,

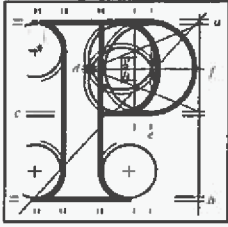
Kieran Somers
Executive Officer

BP100N

Board Direction Attached

Tel	Tel	(01) 858 8100
Glaó Áitiúil	LoCall	1800 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	bord@pleanala.ie

64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902



An
Bord
Pleanála

Board Direction
BD-014653-23
ABP-314834-22

The submissions on this file and the Inspector's report were considered at a Board meeting held on 17/11/2023. The Board treated this case under section 48 of the Planning and Development Act, 2000, as amended. The Board also decided that the planning authority be directed, as follows:

- Remove condition number 8
- Amend condition number 7 as follows:

7	<p>Prior to the commencement of development, a payment of a financial contribution shall be paid to the Planning Authority in respect of public infrastructure and facilities benefiting development in the administrative area of Tipperary County Council that is provided, or intended to be provided, by or on behalf of the Authority in accordance with the terms of the Tipperary County Council Development Contributions Scheme 2020 made under Section 48 of the Planning and Development Act, 2000 (as amended) The amount of the development contribution under this condition is €73,221.68</p>			
	Class	Rate 2020 per sq.m	Area sq.m	Total
	8	€23	3566.16	Permission €82,021.68
	Less contribution associated with former agri sheds that are being re-developed - €8,800			€73,221.68
	<p>Reason: It is considered reasonable that a contribution be made in accordance with the Tipperary County Council Development Contribution Scheme 2020 made under Section 48 of the Planning and Development Act 2000 (as amended).</p>			

Reasons and Considerations

As per the Inspector's recommendation, as follows:


Section 48 (2)(c) provides 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 development contribution scheme made under Section 48 (2)(a) are incurred by the local authority in respect of public infrastructure and facilities which benefit the proposed development.

The Development Management Guidelines for Planning Authorities (Department of the Environment, Heritage and Local Government, June 2007) requires a special development contribution condition to identify the nature/scope of works, the expenditure involved and the basis for the calculation. The planning authority has not provided the basis of the calculation of the sum required (€23,275) and accordingly has not met the criteria for properly levying a contribution as required by Section 48 of the Act. In respect of condition No. 8, the Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered that the condition failed to meet the requirements of Section 48(2)(c) of the Act and should thus be omitted.

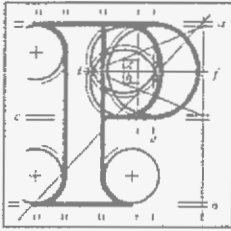
Regarding the amendment to Condition 7, the Board noted the Inspector's calculation in section 7.2.6 of the Inspector's report, and considered it accords with the current Tipperary County Council Development Contribution Scheme (2020).

Note: The Board noted that condition 1(b) of planning permission granted for the proposed development (planning authority reference 2260121) specified that the mitigation measures as set out in the submitted Environmental Impact Assessment report and addendum to same received on 4th July 2022 as further information shall be implemented in full, and that the development shall not become operational until the road widening works at the junction of the L1409 and L14028-0 have been carried out and completed.

Board Member:


Mary Cregg

Date: 5/12/2023



An
Bord
Pleanála

Board Order

ABP-314834-22

Planning and Development Acts 2000 to 2022

Planning Authority: Tipperary County Council

Planning Register Reference Number: 22/60121

Appeal by Milltown Composting Systems Limited care of Walsh and Walsh Architects of The Square, Cahir, County Tipperary in relation to the application by Tipperary County Council of the terms of the Development Contribution Scheme made for the area in respect of condition numbers 7 and 8 of its decision made on the 20th day of September, 2022.

Proposed Development: Reconstruction and extension of existing agricultural storage structure, including use as organic material maturation, and extension to existing storage facility, increase in allowed intake of organic material from 50,000 to 75,000 tonnes per annum to the processing facility, air handling bio-filter installation and associated extract and input fans, all necessary site works, all at Milltownmore, Fethard, County Tipperary.

Decision

The Board, in accordance with section 48 of the Planning and Development Act 2000, as amended, considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area had not been properly applied in respect of condition numbers 7 and 8 and directs the said Council to AMEND condition number 7 so that it shall be as follows for the reason set out and to REMOVE condition number 8 and the reason therefor.

7. Prior to commencement of development, a payment of a financial contribution shall be paid to the planning authority in respect of public infrastructure and facilities benefiting development in the administrative 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 Tipperary County Council Development Contribution Scheme 2020 made under Section 48 of the Planning and Development Act 2000, as amended. The amount of the development contribution under this condition shall be €73,221.68.

Class	Rate 2020 per sq.m	Area sq.m		Total
8	€23	3,566.16	Permission	€82,021.68
Less contribution associated with former agri sheds that are being re-developed - €8,800				€73,221.68

Reason: It is considered reasonable that a contribution be made in accordance with the Tipperary County Council Development Contribution Scheme 2020 made under Section 48 of the Planning and Development Act 2000, as amended.

Reasons and Considerations

Condition number 7:

Regarding the amendment to condition 7, the Board noted the Inspector's calculation in section 7.2.6 of the Inspector's report, and considered it accords with the current Tipperary County Council Development Contribution Scheme (2020).

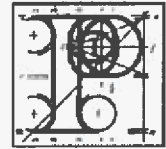
Condition number 8:

Section 48(2)(c) of the Planning and Development Act 2000, as amended, provides 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 development contribution scheme made under Section 48(2)(a) are incurred by the planning authority in respect of public infrastructure and facilities which benefit the proposed development. The Development Management Guidelines for Planning Authorities (Department of the Environment, Heritage and Local Government, June 2007) requires a special development contribution condition to identify the nature/scope of works, the expenditure involved, and the basis for the calculation. The planning authority has not provided the basis of the calculation of the sum required (€23,275) and, accordingly, has not met the criteria for properly levying a contribution as required by Section 48. In respect of condition number 8, the Board, in accordance with section 48 of the Planning and Development Act 2000, as amended, considered that the condition failed to meet the requirements of Section 48(2)(c) of the Act and should, therefore, be omitted.


Mary Cregg


Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this 5th day of December 2023.



Judicial Review Notice

Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Acts (as amended).

A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000, as amended, contain provisions in relation to challenges to the validity of a decision of the Board.

The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(6) of the Planning and Development Act 2000 requires that any application for leave to apply for judicial review must be made within 8 weeks of the date of the decision of the Board, save for decisions made pursuant to a function transferred to the Board under Part XIV of the Planning and Development Act 2000, where any application for leave to apply for judicial review must, as set out in sub-section 50(7), be made within 8 weeks beginning on the date on which notice of the decision of the Board was first sent (or as may be the requirement under the relevant enactment, functions under which are transferred to the Board, was first published). These time periods are subject to any extension which may be allowed by the High Court in accordance with sub-section 50(8).

Section 50A(3) states that leave for judicial review shall not be granted unless the Court is satisfied that (a) there are substantial grounds for contending that the decision is invalid or ought to be quashed and (b) the applicant has a sufficient interest in the matter which is the subject of the application or in cases involving environmental impact assessment is a body complying with specified criteria.

Section 50B contains provisions in relation to the costs of certain judicial review proceedings in the High Court; pursuant to Section 50B(1), Section 50B applies to the following proceedings:

(a) proceedings in the High Court by way of judicial review, or of seeking leave to apply for judicial review, of—

- (i) any decision or purported decision made or purportedly made,
- (ii) any action taken or purportedly taken,
- (iii) any failure to take any action, pursuant to a statutory provision that gives effect to
 - I. a provision of the EIA Directive 85/337/EEC as amended to which Article 10a (as inserted by Directive 2003/35/EC) of that Directive applies,
 - II. the SEA Directive 2001/42/EC, or
 - III. a provision of the IPPC Directive 2008/1/EC to which Article 16 of that Directive applies, or
 - IV. Article 6(3) or 6(4) of the Habitats Directive; or

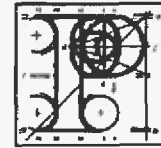
(b) an appeal (including an appeal by way of case stated) to the Supreme Court from a decision of the High Court in a proceeding referred to in paragraph (a);

(c) proceedings in the High Court or the Supreme Court for interim or interlocutory relief in relation to a proceeding referred to in paragraph (a) or (b).

The general provision contained in section 50B(2) is that in proceedings to which the section applies each party shall bear its own costs. The Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant, to the extent that the applicant succeeds in obtaining relief, against a respondent or notice party, or both, to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

General information on judicial review procedures is contained on www.citizeninformation.ie

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.



Fógra faoi Athbhreithniú Breithiúnach

Athbhreithniú breithiúnach ar chinntí an Bhoird Pleanála faoi fhorálacha na nAchtanna um Pleanáil agus Forbairt (arna leasú).

Ní fhéadfaidh duine ar mian leis nó léi agóid a dhéanamh in aghaidh bhailíocht chinneadh de chuid an Bhoird é sin a dhéanamh ach trí athbhreithniú breithiúnach. Tá forálacha in Alt 50, 50A agus 50B den Acht um Pleanáil agus Forbairt 2000, arna leasú, maidir le dúshláin i leith bhailíocht chinneadh an Bhoird.

Ní féidir bailíocht cinnidh arna ghlacadh ag an mBord a cheistiú ach amháin trí iarratas a dhéanamh ar athbhreithniú breithiúnach faoi Ordú 84 de Rialacha na nUaschúrteanna (S.I. Uimh. 15 de 1986). Ceanglaíonn fo-alt 50(6) den Acht um Pleanáil agus Forbairt 2000 go gcaithfear aon iarratas ar chead chun iarratas a dhéanamh ar athbhreithniú breithiúnach a dhéanamh laistigh de 8 seachtaine ó dháta chinneadh an Bhoird, seachas cinntí a dhéantar de bhun feidhme aistrithe chuig an mBord faoi Chuid XIV den Acht um Pleanáil agus Forbairt 2000, i gcás nach mór aon iarratas ar chead chun iarratas a dhéanamh ar athbhreithniú breithiúnach, mar atá leagtha amach i bhfo-alt 50(7), a dhéanamh laistigh de 8 seachtaine ag tosú ar an dáta ar ar tugadh fógra faoi chinneadh an Bhoird ar dtús (nó mar a cheanglófar faoin achtú ábhartha, ar aistríodh feidhmeanna faoi chuig an mBord, a foilsíodh den chéad uair). Tá na tréimhsí ama seo faoi réir aon síneadh a fhéadfaidh an Ard-Chúirt a cheadú de réir fo-alt 50(8).

Sonraítear in alt 50A(3) nach ndeonófar cead d'athbhreithniú breithiúnach mura bhfuil an Chúirt sásta (a) go bhfuil forais shubstaintiúla ann chun a áitiú go bhfuil an cinneadh neamhbhaillí nó gur chóir é a chur ar neamhní agus (b) go bhfuil leas leordhóthanach ag an iarratasóir san ábhar is ábhar don iarratas nó i gcásanna a bhaineann le measúnú tionchair timpeallachta ar comhlacht é a chomhlíonann critéir shonraithe.

Tá forálacha in alt 50B maidir le costais imeachtaí athbhreithnithe bhreithiúnaigh áirithe san Ard-Chúirt; de bhun Alt 50B(1), tá feidhm ag alt 50B maidir leis na himeachtaí seo a leanas:

(a) imeachtaí san Ard-Chúirt mar athbhreithniú breithiúnach, nó trí chead a lorg chun iarratas a dhéanamh ar athbhreithniú breithiúnach, ar—

- (i) aon chinneadh nó cinneadh airbheartaithe a rinneadh nó a airbheartaítear a rinneadh,
- (ii) aon ghníomh a rinneadh nó a airbheartaítear a rinneadh,
- (iii) aon mhainneachtain aon ghníomh a dhéanamh, de bhun forála reachtúla a thugann éifeacht
 - I. d'fhoráil de Threoir EIA 85/337/CEE arna leasú lena mbaineann Airteagal 10a (arna cur isteach le Treoir 2003/35/CE) den Treoir sin,
 - II. do Threoir SEA 2001/42/CE, nó
 - III. d'fhoráil de Threoir IPPC 2008/1/CE a bhfuil feidhm ag Airteagal 16 den Treoir sin maidir léi, nó
 - IV. d'Airteagal 6(3) nó 6(4) den Treoir maidir le Gnáthóga; nó

(b) achomharc (lena n-áirítear achomharc de chás ráite) chun na Cúirte Uachtaraí i gcoinne breithe ón Ard-Chúirt in imeacht dá dtagraítear i mír (a);

(c) imeachtaí san Ard-Chúirt nó sa Chúirt Uachtarach le haghaidh faoisimh eatramhach nó idirbheitheach i ndáil le himeacht dá dtagraítear i mír (a) nó (b).

Is í an fhoráil ghinearálta atá in alt 50B(2) ná go n-íocfaidh gach páirtí in imeachtaí lena mbaineann an t-alt a chostais féin. Féadfaidh an Chúirt, áfach, costais a dhámhachtain in aghaidh aon pháirtí in imthosca sonraithe. Tá foráil ann freisin go ndéanfaidh an Chúirt costais imeachtaí nó cuid de chostais den sórt sin a dhámhachtain d'iarratasóir, a mhéid a éiríonn leis an iarratasóir faoiseamh a fháil, i gcoinne freagróra nó páirtí fógra, nó an dá cheann, a mhéid a chuir an chaingean nó an t-easnamh ar thaobh an fhreagróra nó an pháirtí fógra go páirteach leis an bhfaoiseamh atá á fháil.

Tá eolas ginearálta ar nósanna imeachta athbhreithnithe bhreithiúnaigh ar fáil anseo a leanas, www.citizensinformation.ie.

Séanadh: Mar eolas atá an méid thuas ceaptha. Ní airbheartaíonn sé a bheith ina léirmhíniú ceangailteach ó thaobh dlí ar na forálacha ábhartha agus bheadh sé inmholta do dhaoine atá ag smaoineamh ar chaingean dlí comhairle dlí a lorg.