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Comhairle Contae Lu

- 7 MAR 2019

Oifigi an
Príomhfeidhmeannach

01/03/2019

Re: Draft Variation (No. 1) of the Louth County Development Plan 2015-2021.

Dear Sir,

We refer to the public notice issued in respect of Louth County Council's proposal to make a variation (Variation No. 1) of the Louth County Development Plan 2015-2021. The objective of this proposed Variation is to amend Policy RD39.

We have been requested by our client ????? of ???? address to prepare the following submission in respect of the proposed variation.

For the purposes of this submission we have sought legal advice from Mary Moran Long BL and a copy of that legal opinion is attached.

The Reason for the proposed Variation is as follows:

"Reason: The reason for the variation is to provide a defined broad range of uses that may be considered within the category identified in RD 39 as the Economic Business Zone at Carrickcarnan. The requirement for a Masterplan is to ensure that development occurs in a co-ordinated, integrated, and sustainable manner".

The proposed Variation No. 1 reads as follows:

Current Plan text that is proposed to be deleted is shown in red strikethrough, ~~like this~~. Text that is proposed to be added is shown in green bold, like this.

Policy RD 39

To consider developments falling within the following categories; limited one-off housing, agricultural developments, extensions to existing authorised uses and farms, appropriate farm diversification projects; developments to be used for leisure, recreation and tourism; holiday accommodation including cottages and lodges where these are part of an existing or proposed integrated tourism complex; hotels/ guest houses / B & B's (only where the proposal involves the re-use or diversification of an existing building); extensions to existing authorised commercial and industrial developments; renewable energy schemes, public utility infrastructure, certain resource based and location specific developments of significant regional or national importance, critical infrastructure projects, nursing*

*homes/analogous services, ** and Economic Business Zone at Carrickcarnon*** (for small scale commercial development including off line Motorway Services area, truck stop, service, repair and parking area and associated ancillary infrastructure to include motel/hotel, ancillary retail shop and dining facility, light industrial, storage and logistics facilities, retail warehousing (bulky goods only) and motor sales. To ensure co-ordinated and integrated development, this area will be subject to the preparation of a Masterplan for the written agreement of the Planning Authority. ~~linked to leisure, recreation and tourism, agricultural diversification and extensions to authorised developments~~).*

** Refer to Section 2.19.1 for Qualifying Criteria*

*** In the location identified by red dot on Map 3.1 'Development Zones'*

**** In the location identified by light blue dot on Map 3.1 'Development Zones'*

Grounds of the Submission:

1. The inclusion of the words "small-scale" render this proposed Variation useless as it would prevent the range of uses proposed for this site being fulfilled.

There is a conflict between the words "small scale" and the proposed range of uses being proposed within the Economic and Business Zone at Carrickcarnon.

The types of uses proposed including Off-line Motorway Service area, truck stop, service, repair and parking area and associated infrastructure to include motel/hotel, ancillary retail shop and dining facilities, light industrial, storage and logistics facilities, retail warehousing and motor sales are not **small scale**.

Our client has positive proposals for the inclusion of all of these uses in a new development which was previously granted by Louth County Council but was subsequently refused by An Bord Pleanala due to the lack of zoning of the site. The zoning of the site as an Economic and Business zone in Carrickcarnon by the elected members of Louth County Council in the adoption of the 2015 Development Plan sought to address that. This proposal was supported by the Minister following a review by a Senior Inspector by the Department of the Environment.

However, the wording of RD39 prevented our client from proceeding with an application for these proposed uses as the specific uses were not provided for and it would have been likely that An Bord Pleanala would refuse it due to the lack of defined acceptable uses in this zone.

The Planning Authority were made aware of this and many attempts have been made by our client to resolve this matter so that a fresh application could be made. Three years after the adoption of the plan our client is still unable to make an application due to the lack of cooperation on the part of the Executive of Louth County Council.

This proposed Variation appears to attempt to resolve the matter on the face of it however the inclusion of the words "Small Scale" are the total opposite to the actual uses proposed and therefore render this proposed variation useless and unworkable. There is no such thing as a small scale "off line service area" or a small-scale truck service area or small scale logistics area.

Having considerable experience in appeals to An Bord Pleanala with 15 years private practice work it is my professional planning opinion that it would impossible to proceed with an application

for the uses proposed on this site as they would most certainly face refusal by An Bord Pleanala due to the words "Small Scale".

- 2. The applicant has no objection to the requirement for a Masterplan for the site however, the requirement for a Masterplan to be agreed with the planning authority would result in further delays and frustrate the planning process in the event of a lack of agreement.**

Having regard to the fact that it has taken the Planning Authority 3 years since the adoption of the plan to prepare this variation which is unworkable it is very unlikely that it would be possible to reach agreement on a masterplan within the lifetime of this Plan.

The need for a Masterplan was not a requirement of An Bord Pleanala or the Minister in the reports in respect of the Draft Direction.

The applicant has no objection to the requirement for the preparation of a Masterplan however there should be no requirement for it to be agreed with the Planning Authority. The Planning Authority will ultimately be deciding on the planning application when it is lodged.

Request

We request that the proposed Variation No. 1 be amended to omit the words small scale and omit the need to agree a masterplan with the Planning Authority.

On behalf of our client we request that the proposed variation 1 be amended to read as follows:

- 1. Current Plan text that is proposed to be deleted is shown in red strikethrough, ~~like this~~. Text that is proposed to be added is shown in green bold, **like this**.*

Policy RD 39

To consider developments falling within the following categories; limited one-off housing, agricultural developments, extensions to existing authorised uses and farms, appropriate farm diversification projects; developments to be used for leisure, recreation and tourism; holiday accommodation including cottages and lodges where these are part of an existing or proposed integrated tourism complex; hotels/ guest houses / B & B's (only where the proposal involves the re-use or diversification of an existing building); extensions to existing authorised commercial and industrial developments; renewable energy schemes, public utility infrastructure, certain resource based and location specific developments of significant regional or national importance, critical infrastructure projects, nursing homes/analogous services, ** and Economic Business Zone at Carrickcarnon*** **including off line Motorway Services area, truck stop, service, repair and parking area and associated ancillary infrastructure to include motel/hotel, ancillary retail shop and dining facility, light industrial, storage and logistics facilities, retail warehousing (bulky goods only) and motor sales. To ensure co-ordinated and integrated development, this area will be subject to the preparation of a Masterplan.***

** Refer to Section 2.19.1 for Qualifying Criteria*

*** In the location identified by red dot on Map 3.1 'Development Zones*

***** In the location identified by light blue dot on Map 3.1 'Development Zones'
This does not interfere with policy EDE 13 having regard to the fact that the zone is a
sufficient distance from the interchange.**

Yours sincerely,



Geraldine Fahy BA MRUP MIPI

Attached:
Legal opinion from Mary Moran Long BL

MARY MORAN - LONG
Ph D Barrister-at-Law

The Law Library, Four Courts, Inns Quay, Dublin 7
Tel:087 2490428 /01 8176729 • Fax: 01 8720455 • E-mail: moranlong7@gmail.com

Your Ref:

Ger Fahy
Ger Fahy Planning
Annaghdown
Pagestown,
Kilcloon
County Meath

15th February 2019

Via e mail

RE: Opinion in respect of proposed variation of Louth County Council Development Plan 2015-2021

Client: David Burns, Buncorp Group Ltd.

Dear Ger,

I refer to your instructions to prepare an opinion on the wording of the proposed variation of Policy RD 39 of Louth County Council Development Plan 2015-2021 in respect of the following:

1. The proposed wording of Variation 1 and the inclusion of the words "small scale".
2. The inclusion of the need for a masterplan to be agreed with the planning authority.

1. The proposed wording of Variation 1 and the inclusion of the words "small scale" of Policy RD 39 in Louth County Council Development Plan 2015-2021

1.1. Policy RD 39 Louth County Council Development Plan 2015-2021 Development Plan states as follows:

'RD 39 To consider developments falling within the following categories; limited one-off housing, agricultural developments, extensions to existing authorised uses and farms, appropriate farm diversification projects; developments to be used for leisure, recreation and tourism; holiday accommodation including cottages and lodges where*

*these are part of an existing or proposed integrated tourism complex; hotels/ guest houses / B & B's (only where the proposal involves the re-use or diversification of an existing building); extensions to existing authorised commercial and industrial developments; renewable energy schemes, public utility infrastructure, certain resource based and location specific developments of significant regional or national importance, critical infrastructure projects, nursing homes/analogous services, ** and Economic Business Zone at Carrickcarnan*** (for small scale commercial development linked to leisure, recreation and tourism, agricultural diversification and extensions to authorised developments).*

** Refer to Section 2.19.1 for Qualifying Criteria*

*** In the location identified by red dot on Map 3.1 'Development Zones'*

**** In the location identified by light blue dot on Map 3.1 'Development Zones' (emphasis added)*

1.2. An issue was raised with Louth County Council in respect of the contradiction/anomaly that exists in the Development Plan between the text of Policy RD39 and the location identified by light blue dot on Map 3.1. 'Development Zones'. Representation was made to the Council that planning permission would be difficult if not impossible grant for an Economic Business Zone at Carrickcarnon to include an off like motorway services due to the wording of Policy RD39.

1.3. A constructive meeting was held in July 2018 between David Burns, the developer and Ger Fahy as his planning consultant and the CEO of Louth County Council and representatives of the planning department at which it was agreed that a variation of the Development Plan was possible to rectify the matter.

1.4. Variation of the Development Plan is governed by Section 13 of the Planning and Development Act as amended which provides as follows;

'13.—(1) A planning authority may at any time, for stated reasons, decide to make a variation of a development plan which for the time being is in force.

(2) Where a planning authority proposes to make a variation in a development plan, it shall—

(a) send notice and copies of the proposed variation of the development plan to the Minister, the Minister for Arts, Heritage and the Gaeltacht, the Board, the relevant regional assembly, and, where appropriate, to any adjoining development committee within the area of the development plan,

(b) publish notice of the proposed variation of the development plan in one or more newspapers circulating in that area.

(3) A notice under subsection (2) shall state—

(a) the reason or reasons for the proposed variation,

(b) that a copy of the proposed variation may be inspected at a stated place or places and at stated times during a stated period of not less than 4 weeks (and the copy of the draft variation shall be kept available for inspection accordingly), and

(c) that written submissions or observations with respect to the proposed variation made to the planning authority within the said period will be taken into consideration before the making of the variation.

1.5. The procedure for the variation of the Development Plan under section 13 PDA as amended is a discretionary executive function with the requirement for 'stated reasons' where the planning authority decides to make a variation.

1.6. Section 13 (2) requires the planning authority to issue a notice of the variation which is sent to the Minister and other bodies and is also published in a local newspaper. The notice must include the stated reason for the variation and informs the public to the location and times where the proposed variation is available for inspection within a period of 4 weeks and that written submissions or observations made within that period will be taken into consideration. The proposed Variation 1 of Policy RD39 has been published, however, a notice under section 13(2) has not been made available. The stated reasons for the proposed variation are therefore not known.

1.7. The Variation of RD39 proposed and published by Louth County Council states as follows:

'Policy RD 39

To consider developments falling within the following categories; limited one-off housing, agricultural developments, extensions to existing authorised uses and*

*farms, appropriate farm diversification projects; developments to be used for leisure, recreation and tourism; holiday accommodation including cottages and lodges where these are part of an existing or proposed integrated tourism complex; hotels/ guest houses / B & B's (only where the proposal involves the re-use or diversification of an existing building); extensions to existing authorised commercial and industrial developments; renewable energy schemes, public utility infrastructure, certain resource based and location specific developments of significant regional or national importance, critical infrastructure projects, nursing homes/analogous services, ** and Economic Business Zone at Carrickcarnon*** (for small scale commercial development including off line Motorway Services area, truck stop, service, repair and parking area and associated ancillary infrastructure to include motel/hotel, ancillary retail shop and dining facility, light industrial, storage and logistics facilities, retail warehousing (bulky goods only) and motor sales. To ensure co-ordinated and integrated development, this area will be subject to the preparation of a Masterplan for the written agreement of the Planning Authority.~~linked to leisure, recreation and tourism, agricultural diversification and extensions to authorised developments).~~*

** Refer to Section 2.19.1 for Qualifying Criteria*

*** In the location identified by red dot on Map 3.1 'Development Zones*

**** In the location identified by light blue dot on Map 3.1 'Development Zones'*

1.8. The proposed variation inside the brackets includes the words 'small scale' to describe commercial development at the Economic Business zone at Carrickcarnon. It goes on to list the categories of substantial development including the off line Motorway Services area etc. Small scale commercial development envisages small commercial units and perhaps a small filling station. The development types listed after the words 'small scale' are large developments. The words 'small scale' in the context of categories of large development listed in the proposed variation of Policy RD 39 for the Economic Business zone at Carrickcarnon is a contradiction.

1.9. The contradiction confuses the meaning and interpretation/construction of Policy RD39. In *Tennyson v. Corporation of Dun Laoghaire* [1991] 2 I.R 527 the Court

reviewed the principles regarding construction of planning documents as considered by the Supreme Court *In re X.J.S. Investments Ltd. [1986] I.R. 750* at page 756: -

"Certain principles may be stated in respect of the true construction of planning documents:

(a) To state the obvious, they are not Acts of the Oireachtas or subordinate legislation emanating from skilled draftsmen and inviting the accepted canons of construction applicable to such material.

(b) They are to be construed in their ordinary meaning as it would be understood by members of the public without legal training as well as by developers and their agents, unless such documents, read as a whole, necessarily indicate some other meaning . . ."

It is clear from *Tennyson* that planning documents are not legal documents and the wording is to be given its ordinary meaning as understood by members of the public as well as developers and their agents. Louth County Council Development Plan read as a whole does not indicate or require some other meaning for Policy RD39. The list of large developments set out in the proposed variation to Policy RD39 is indicative of the substantial development types envisaged for the Economic Business Zone at Carrickcarnon. The words 'small scale' contradicts the types of large scale commercial developments described in the proposed variation. The net effect is to confuse the meaning of the proposed variation to Policy RD39.

The wording of the proposed variation of Policy RD39 must be capable of being understood by developers and their agents. It is difficult to envisage how developers or their agents could prepare an application to Louth County Council for planning permission for proposed development (of the type described in the proposed variation) at the Economic Business Zone at Carrickcarnon in circumstances where the words 'small scale' are retained. It is equally difficult to envisage how an application for planning permission for large scale commercial development such as an off line motorway services, hotel etc at the Economic Business Zone at Carrickcarnon could succeed where the words 'small scale' are retained. Particularly as Louth County Council planning authority in making a decision in respect of an application for permission is bound by the Development Plan. The wording of the

proposed variation to Policy RD39 is confused and nonsensical when given its ordinary meaning.

1.10. The net effect of retaining the words ‘small scale’ in the proposed variation to Policy RD 39 is the Development Plan is to make it impossible for the Economic Business Zone at Carrickcarnon to be developed. This is contrary to the intention of the Elected Members to make provision for substantial development such as the off line motorway services at Carrickcarnon when the current Development Plan was made in 2016 and which was supported by the Minister in the letter dated 15 April 2016. It is understood that representation made to the Louth County Council which resulted the section 13 variation procedure being invoked was for the sole purpose of rectifying the conflict in meaning between the text of Policy RD39 and the associated Map in the Development Plan.

1.11. Ger Fahy of Ger Fahy Planning in her letter dated 17 January 2019 to Peter Savage set out the following wording for the proposed variation of the Development Plan:

To consider developments falling within the following categories; limited one-off housing, agricultural developments, extensions to existing authorised uses and farms, appropriate farm diversification projects; developments to be used for leisure, recreation and tourism; holiday accommodation including cottages and lodges where these are part of an existing or proposed integrated tourism complex; hotels/ guest houses / B & B's (only where the proposal involves the re-use or diversification of an existing building); extensions to existing authorised commercial and industrial developments; renewable energy schemes, public utility infrastructure, certain resource based and location specific developments of significant regional or national importance, critical infrastructure projects, nursing homes/analogous services and Economic Business zone at Carrickcarnon to facilitate the provision of an off line Motorway Services area truck stop, service, repair and parking area and associated ancillary infrastructure to include motel/hotel, related retail shops and dining facility. Upgrading Centrepont Business Park and expanding light industrial and storage and logistics facilities and to expand the bulky retail and services which are currently*

operating at centre point business park in accordance with the Economic and Business zoning and:

*‘***In the location identified by the dot on Map 3.1. entitled Development Zones’
Policy EDE 13 is not applicable within this Economic and Business zone.’ (emphasis added)*

1.12. The opportunity has arisen through the Section 13 PDA 2000 as amended procedure to correct any anomalies and contradictions between the text of Louth County Council Development Plan 2015-2021, RD39 in particular and Map 3.1. Development Zoning. This opportunity should be used to end the confusion in the meaning of Policy RD39 by the removal of contradictory wordings. In my opinion the uncertainty may be addressed simply by using the wording proposed by Ger Fahy which has removed the words ‘small scale’ from the proposed variation of Policy RD39. If that is done the text of the current Louth County Council Development Plan will be fully aligned with Development Zoning Map 3.1 for the area which will facilitate rather than confuse the planning process for developers, Louth County Council Planning Department and if necessary An Bord Pleanala.

1.13. The procedure for variation of the development plan under section 13(5) requires that the elected members consider the proposed variation and the report prepared by the manager (of the planning authority). Under section 13(6) by resolution the elected members may make the variation with or without further modification or refuse to make it. Under section 13(6)(c) a further modification to the variation may be made if it is minor in nature and not likely to have significant effects on the environment or adversely affect the integrity of a European Site and is subject to further restrictions which are not relevant to this issue. Therefore, if the words ‘small scale’ are retained in the proposed variation to Policy RD39 the elected members may require a modification by removal of the words small scale in making the variation.

2. The inclusion of the need for a masterplan to be agreed with the planning authority.

2.1. The proposed variation to Policy RD39 Louth County Council Development Plan 2015-2021 includes the following:

'To ensure co-ordinated and integrated development, this area (Carrickcarnon) will be subject to the preparation of a Masterplan for the written agreement of the Planning Authority.'

It is presumed that the Masterplan for the written agreement relates solely to the area marked with the light blue dot on Development Zone Map 3.1 which has one owner and will be developed by the owner of the lands. There are no other parties with interest in the lands. The requirement for 'a Masterplan for the written agreement of the planning authority' is not included in Policy RD39 as published. The reason published by Louth Planning Authority for a Masterplan is:

'The requirement for a Masterplan is to ensure that development occurs in a co-ordinated, integrated, and sustainable manner'

2.2. The development of the lands at Carrickcarnon will require the submission of a planning application(s) by the developer to Louth County Council planning authority. In this regard the relevant provisions of the Planning and Development Act 2000 as amended and the Planning and Development Regulations 2001 as amended must be fully complied with by the developer.

2.3. Section 34(2)(a) provides:

'When making its decision in relation to an application under this section, the planning authority shall be restricted to considering the proper planning and sustainable development of the area, regard being had to—

(i) the provisions of the development plan,'

A decision by the Planning Authority is therefore restricted to considering the proper planning and sustainable development of the area. The provision must be strictly adhered to by the Planning Authority. Proper planning and sustainable development encompasses 'co-ordinated, integrated and sustainable' given that it is unrealistic that the principle would promote 'uncoordinated, un-integrated, unsustainable' development. It is therefore difficult to comprehend the necessity for a masterplan for agreement with the Planning Authority and the sole developer, which in effect repeats

the statutory duty of the Planning Authority when making its decision in respect of an application for planning permission, at additional and unnecessary cost to the Planning Authority and the developer.

3. Conclusion

3.1. In conclusion the wording of the proposed variation of Policy RD39 of Louth County Council Development Plan by the inclusion of the words 'small scale' is contradictory and confused. As a result it is difficult to determine its meaning and how it may operate effectively in practice from the perspectives of the developer and its agent and the Planning Authority.

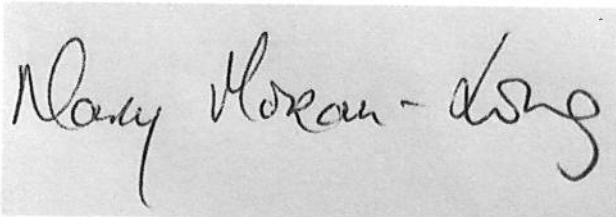
3.2. In respect of the retention of the words 'small scale' a further modification, minor in nature, may be made under section 13(6) with certain limitations. This is a reserved function, therefore, the wording may be modified by the elected members to remove the words 'small scale.'

3.3. The inclusion of a new requirements for a Masterplan is superfluous and unnecessary given the provisions of section 34(2)(a) of the Planning and Development Act 2000 as amended in circumstances where there is a sole developer of the lands at Carrickcarnon, County Louth.

Nothing further occurs.

The foregoing is based upon the information provided.

Yours sincerely

A rectangular area containing a handwritten signature in black ink. The signature is written in a cursive style and reads "Mary Moran-Long".

Mary Moran-Long BL

