



An
Bord
Pleanála

Board Direction
BD-004297-19
ABP-303141-18

The submissions on this file and the Inspector's report were considered at Board meetings held on 29/08/2019 and 16/10/2019.

The Board decided to treat this case under section 139 of the Planning and Development Act, 2000. At the meeting of 29/08/2019, the Board were minded to remove condition numbers 26, 27 and 34 and to amend condition 25 but considered that the replacement condition number 25 was a new issue which had not been raised by parties to the appeal and therefore decided to defer consideration of this case and to issue a Section 137 notice to each of the parties.

At the meeting of the 16/10/2019 the Board considered the submission received in response to the Section 137 notice and decided based on the Reasons and Considerations set out below that the planning authority be directed, as follows:

Remove condition numbers 26, 27 and 37

Amend condition number 25 as follows;

25. The developer shall pay to the planning authority a financial contribution in the sum of €243,600.00 as a special contribution under section 48(2) (c) of the Planning and Development Act 2000 in respect of the provision of traffic calming works including Toucan Crossings along a 664m section of the R445 fronting and running either side of the Magee Barracks road frontage. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the ***Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

Reasons and Considerations

Having regard to the nature and scale of the proposed development and the anticipated additional traffic volumes along the R445 and into and out of the site that will be generated by the proposed development, as a proportion of the anticipated total traffic flows that will be generated by the development in combination with the development of the entire Magee Barracks site together with the proposed Cherry Avenue park, it is considered that the requirements of Condition No. 25, Condition No. 26, Condition No. 27 and Condition No. 34 place an unduly onerous burden on the Applicant and the Developer of the proposed Cancer Treatment Clinic.

Accordingly, it is considered that Condition No. 26, Condition No. 27 and Condition No. 34 of the planning authority notification of decision to grant planning permission should be removed and Condition No.25 should be amended.

It is considered that the Applicant should contribute towards the traffic calming works required on 664m section of the R445 specified by the planning authority by way of the payment of a Special Financial Contribution pursuant to Section 48(2) (c) of the *Planning and Development Act, 2000*, as amended, in accordance with the schedule of costs indicated by the planning authority in their letter of 5th, November 2018 (accompanying the planning authority notification of decision to grant planning permission for the proposed development of the same date) as revised by the planning authority in their letter to An Bord Pleanála dated 7th, March 2019 (i.e. 12%

of the total estimated cost of €1,928,000.00 = €231,600.00). It is considered that the Applicant should also contribute, on a pro rata basis with the other developments benefitting from the proposed works to the 664m section of the R445, towards the cost of the provision of the addition of 2 no. Toucan crossings identified by the planning authority as being required along this section of the upgraded R445 calculated on the basis of the estimate of costs provided by the planning authority (i.e. 12% of €100,000.00 = €12,000.00). The total Special Financial Contribution to be levied pursuant to Section 48(2) (c), therefore, amounts to €243,000.00 (i.e. €231,600.00 + €12,000.00).

Board Member:

Date: 17/10/2019

Maria FitzGerald