



An
Bord
Pleanála

Board Order
ABP-312914-22

Planning and Development Acts 2000 to 2022

Planning Authority: Cork County Council

Planning Register Reference Number: 21/06795

Appeal by Brian Miskella care of J. and N. Murphy Limited of Macroom, County Cork in relation to the application by Cork County Council of the terms of the Development Contribution Scheme and the Supplementary Contribution Scheme made for the area in respect of conditions numbers 2 and 3 of its decision made on the 9th day of February, 2022.

Proposed Development: Change of use of part of first floor (also including change of use of access stairs from ground floor) from bar and restaurant use to office and services use, to include financial, professional, medical, health and other services provided principally to visiting members of the public at Ballynoe Inn Pub and Restaurant, Rushbrooke Links, Cobh, County Cork

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 number 2 and directs the said Council to REMOVE condition number 2 and the reason therefor and in accordance with section 49 of the Planning and Development Act, 2000, as amended, considered, based on the reasons and considerations set out below, that the terms of the Supplementary Development Contribution Scheme for the area had not been properly applied in respect of condition number 3 and directs the said Council to REMOVE condition number 3 and the reason therefor.

Reasons and Considerations

In respect of condition number 2.

The Cork County Council Development Contribution Schemes 2004 includes types of Development that would be subject to 'initial development contributions for non-residential developments' as set out in Table G6. Specifically this table includes two types of development, 'office and retail' and 'other non-residential uses' that are of specific relevance to the consideration of the appeal before the Board. The Scheme expands on the types of development and states that for the purpose of this contribution scheme 'offices' and 'retail type' uses include among others, office based industry, bars and restaurants. The general scheme costs were subsequently updated in 2014 with a cost per square metre of office and retail set at €48.97 for both development types within this Section 48 general contributions scheme. The Board was satisfied that, notwithstanding that the application sought permission for a 'change of use', in planning terms, at first floor level from bar and restaurant to office and service use, this did not constitute a change in development type in the context of the 'general' element of the adopted Development Contribution Schemes 2004

and accordingly, no development contribution is applicable. Accordingly, the Board hereby directs the planning authority to **REMOVE Condition number 2** attached to the grant of permission.

In respect of **Condition number 3**

The supplementary contributions element of the Cork County Council Development Contribution Schemes 2004 includes Types of Development that would be subject to 'initial and target development contributions for non-residential developments' as set out in Table S2' in respect of the Cobh/Midleton – Blarney Suburban Rail Project. Specifically this table includes two types of development, 'office and retail within 500 m' and 'other non-residential uses' that are of specific relevance to the consideration of the appeal before the Board. The supplementary scheme was subsequently updated in 2014 with a cost per square metres of office and retail separated out (€52.00 for office and €92.82 for retail). The Board was satisfied that a change of development type of 'retail' which includes bars and restaurant as set out in the scheme, to office would not incur any additional contribution costs by reference to the types of development set out in the adopted supplementary element of the Development Contribution Schemes 2004 and that office attracts a smaller contribution than retail within this Section 49 scheme and accordingly, no supplementary development contribution is applicable. Accordingly, the Board hereby directs the planning authority to **REMOVE condition number 3** attached to the grant of permission.

Reasons for differing from the inspector's recommendation

In disagreeing with the Inspector's recommendation to attach contributions at reduced amounts than the amounts calculated by the planning authority, the Board noted the various scenarios considered by the inspector and the inspector's categorisation of the new use (office and service) as a non-residential development type category for the purpose of application of both Section 48 (general) and Section 49 (supplementary) contributions and that accordingly a contribution of €16.32 per

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square metre (non-residential) applied to the proposed development, with a reduced floor area and an offset of 75% for the roads element in the calculation of the general contribution. The Board did not share the Inspector's findings that the 'non-residential' development type was the correct category type nor that this should then be applied as a 'de novo' principle. Instead the Board was satisfied that it was relevant to consider if any change of category type had occurred in the context of the existing development. The Board was satisfied that the proposed development would not attract either a general or supplementary development contribution, by reference in particular to Tables G6 and S2 of the adopted schemes, and the definitions for office based industry, bars and restaurants set out in the schemes. While the 75% offset and the actual floor area both had merit in the case of a new development, this is not the case in the current proposal, where, as outlined above, and concluded by the Board, no change in development type occurred within the meaning of the adopted Development Contribution Schemes that would lead to the payment of either a section 48 or 49 development contribution.



Patricia Calleary

Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board.

Dated this *04* day of *April* **2024**