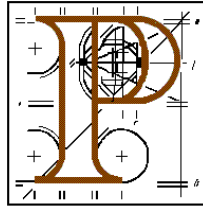


An Bord Pleanála



Inspector's Report

Development: 12 Houses and all ancillary works at Poulavone, Carrigrohan, Ballincollig, Co. Cork.

Planning Application

Planning Authority: Cork County Council

Planning Authority Reg. Ref.: 15/6095

Applicant: Dan O'Brien

Type of Application: Permission

Planning Authority Decision: Grant Permission

Planning Appeal

Appellant(s): As Above

Type of Appeal: First Party V Financial Contribution Condition (Condition no. 3).

Observers: None

Inspector: Kenneth Moloney

1.0 INTRODUCTION

This is a first party appeal against a financial contribution condition which was attached to the planning authority's decision to grant permission for 12 no. semi-detached houses. As this is an appeal in respect of a financial contribution, the provisions of Section 48 of the Planning and Development Act 2000 – 2010, apply and the Board is restricted to considering this matter alone and cannot consider the matter de nova. I have therefore confined my assessment to Condition no. 3 of the local authority permission.

2.0 PROPOSED DEVELOPMENT

The proposed development is for the construction of 12 no. houses and all ancillary works including vehicular access, parking, drainage and landscaping.

The proposal comprises of 12 no. semi-detached two-storey houses all with off-street car parking provision to the front and private amenity space in the form of rear gardens.

3.0 PLANNING AUTHORITY'S DECISION

The Planning Authority decided to grant planning permission subject to 19 conditions.

Condition no. 3 states 'at least one month before commencing development or at the discretion of the Planning Authority within such further periods or periods of time as it may nominate in writing, the developer shall pay a special contribution of €36,800.00 to Cork County Council, updated monthly in accordance with the Consumer Price Index from the date of grant of permission to the date of payment, in respect of specific exceptional costs not covered in the Council's General Contributions Scheme, in respect of works proposed to be carried out, for the provision of amenity facilities and works in Ballincollig Regional Park.

The payment of said contribution shall be subject to the following:

- (a) where the works in question – (i) are not commenced within 5 years of the date of payment of the contribution (or final instalment if paid by phased payment), (ii) have commenced but have been completed within 7 years of the date of payment of the contribution (or final instalment if paid by phased payment), or (iii) where the Council has decided not to proceed with the proposed works or part thereof, the contribution shall, subject to paragraph (b) below, be refunded to the applicant together with any interest which may have accrued over the period while held by the Council.
- (b) Where under sub-paragraphs (ii) or (iii) of paragraph (a) above, any local authority has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any

refund shall be in proportion to those proposed works which have not been carried out. (c) payment of interest at the prevailing interest rate payable by the Council's Treasurer on the Council's General Account on the contribution or any instalments thereof that have been paid, so long and in so far as it is or they are retained unexpected by the Council.

Reason: It is considered appropriate that the developer should contribute towards these specific exceptional costs, for works which will benefit the proposed development.

Internal Reports: There are three internal reports on the file:

- Area Engineer; No objection subject to conditions.
- Estates Primary; No objections subject to conditions.
- Public Lighting; No objections.

Submission; There is a submission from Irish Water who have no objections. Inland Fisheries Ireland have submitted no objection provided that the septic effluent from the development is disposed to the public sewer.

Objections: There is one third party objection on the planning file and issues raised have been noted and considered. There is also a submission from Rosewood Residents Association who support the proposed development.

4.0 PLANNING HISTORY

- L.A. Ref. 11/5568 - Planning permission granted to Finbarr Gannon to extend the duration of planning permission L.A. Ref. 06/8566 (PL.04.220747). This permission will cease to have effect on 02/05/2017.
- L.A. Ref. 06/8566 (PL.04.220747) – Permission granted to Finbarr Gannon for the demolition of existing house and the construction of 19 no. dwellings comprising of 4 no. four bed terraced dwellings, 6 no. three bed terraced dwellings, 3 no. four bed duplex units, 3 no. two bed duplex units, 3 no. 1-bed apartments with amenity place and provision for 32 no. car parking spaces.

5.0 DEVELOPMENT PLAN

The operational development plan is the Cork County Development Plan, 2014 – 2020.

Paragraphs 5.5.2 – 5.5.12 (inclusive) of the Cork County Development Plan, 2014 – 2020, refers to public open space provision.

6.0 GROUNDS OF APPEAL

The applicant's agent submitted an appeal in relation to Condition no. 3 of the Local Authority permission. The main grounds of appeal are summarised as relating to the following; -

Summary of Appeal

- The Local Authority has failed to identify the specific recreation / amenity works to justify the special contribution charge.
- The special contribution in addition to the general development contribution is a double charge.
- There are a number of precedents where An Bord Pleanala omitted special contributions in circumstances similar to the current appeal.

Grounds of Appeal

Failure to identify the specific recreation / amenity works

- The specific nature of the proposed amenity works are not specified or detailed in any way by the Council.
- Condition no. 3 is not amenable to implementation under Section 48(12) of the Planning Act.
- There is an onus on the Planning Authority to demonstrate that the provision of amenity facilities and works in the Ballincollig Regional Park are exceptional such that they could not have been envisaged in the general development contribution scheme.
- The Planning Authority must also demonstrate that the costs are specific to this development in the sense that they would benefit the proposed scheme rather than the general area.
- Section 1.2.15 of the Macroom Local Area Plan, 2011, states that Ballincollig is well served by a range of sports and recreational facilities.
- The local Engineer who recommended the special development contribution has failed to identify the specific works to which the special contribution charge is sought.
- The special development contribution is not in accordance with Section 48(12) of the Act.

Double Charge

- The general development contribution scheme already includes a levy for recreation and amenity.
- The development contribution scheme, based on Table G4, is levied per m² gross floor area (with no charge for first 40m² of a conventional house) for 'roads and amenity'.
- The Development Contribution Scheme states that the general contribution scheme reflects the objectives as set out in the County Development Plan, and this includes 'recreational amenity'.
- It is clear that the Local Authority has already charged contributions in the general development contribution scheme and it is not open to the Local Authority to charge a special contribution.

- An Bord Pleanála (appeal ref. 238720) has determined that the CCC has applied a double charge and special contribution charge is a double charge.
- It is contended that the amount of the levy sought under the special development contribution is excessive having regard to the amount already levied under the general contribution scheme.

Precedents

- The following precedents, i.e. appeal ref. 234024 and appeal ref. 238720 demonstrate that the special development contributions were removed as the Local Authority failed to identify the specific nature, scope and details of the financial contributions sought.

Second Party Response

The following is the summary of a response submitted by the local authority;

- The proposed development includes no public open space provision.
- The submitted application stated that the site did not lend itself to the provision of public open space and instead suggested that the Ballincollig Regional Park is an amenity in close proximity.
- Paragraph 5.5.7 of the County Development Plan requires public open space provision of 12% to 18%.
- Paragraphs 5.5.10 and 5.5.11 of the County Development Plan outlines that in some instances, i.e. infill developments that public open space may not be required. In some instances a financial contribution in lieu of public open space may be acceptable.
- The provisions of County Development Plan, 2014, is considered reasonable to attach a special contribution in lieu of public open space.
- The Board is referred to the Council's Recreation and Amenity Policy 2006.
- Policy Objective 6 of the Council's Recreation and Amenity Policy 2006 states that residential developments shall be levied in accordance with the Development Contribution Scheme adopted by the Council.
- Policy Objective 7 outlines that the standards for residential development is listed in Appendix A. It is the Council's policy to maximise the existing resources.
- A cash equivalent is considered appropriate. The monies raised in this form can only spend on the provision of recreational facilities to serve the development.
- In calculating the special development contribution the value of land was taken as €250,000 / acre. The value point is €18,400 and the policy requires 1 point per six acres and as such 2 points per 12 houses.
- There are plans to extend the regional park and the woodlands and walking trails within. The park runs the full length of the town

however monies raised by the contribution will be used to increase the amenities close to the development.

First Party Response

The following is a summary of a response submitted by the applicant's agent;

- It is contended that the local authority has not dealt with the substantive issue in the appeal.
- The Council's Recreation and Amenity Policy 2006 has failed to identify the specific recreation / amenity works to justify the special contribution charge. The special contribution in addition to the general development contribution is a double charge.
- There are a number of precedents where An Bord Pleanala omitted special contributions in circumstances similar to the current appeal.
- S. 48(2) (c) requires that conditions imposed must be amenable to implementation under Section 48(12) of the Planning Act.
- There is an onus on the Planning Authority to demonstrate that the works are exceptional and could not have been envisaged in the general development contribution scheme.
- By failing to identify the 'specific exceptional' works the councils decision fails to adhere to S. 48 (12) of the Act.
- It is contended that the Special Development Contribution is a double charge as the general contribution charge includes a levy for recreation and amenity.

7.0 ASSESSMENT

Section 48 (1) (c) of the Planning and Development Act, 2000 (as amended) states that *'a planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development'*.

Therefore the significant issue, in my view, is whether the proposed development will require the local authority to provide public infrastructure and facilities which are specific and exceptional and not covered by the general scheme.

Condition no. 3 of the local authority permission itemises the specific infrastructure that will require expenditure by the local authority and which are not covered by the general scheme and this includes;

- The provision of amenity facilities and works in Ballincollig Regional Park.

The main argument submitted by the appellant is the absence by the local authority to specify the nature of works for which the financial contribution is sought. The appellant therefore argues that this would essentially mean that the condition imposed is not amenable to implementation under the

terms of Section 48(12) of the Planning Act, 2000 (as amended). This provision in the Act sets up the mechanism for which refunds may be payable to the developer in the event that the local authority does not complete the infrastructure works for which the special development contribution is sought. The second main argument submitted by the appellant is that the special development contribution sought by condition no. 3 is essentially a double charge as contributions for recreation and amenity are provided for in the general development contribution scheme. I would also acknowledge the precedents submitted by the appellant.

An important consideration is the layout of the proposed development which sought planning permission. The appeal site is relatively small, i.e. 0.83 acres, and the configuration of the appeal site is challenging for housing developments. The proposed development, permitted by the local authority, provides for 12 no. houses without public open space provision. An argument was made by the applicant's agent that given the restricted nature of the site, high standard of private open space provision and the proximity to the Ballincollig Regional Park and that the amenity provided is acceptable.

The national guidelines, Sustainable Residential Development in Urban Areas, 2009, state that in cases of greenfield sites the minimum public open space provision for housing development shall be a minimum of 15% of the site area. The appeal site, having regard to its location, is largely a brown field site and as such it can be reasonably argued that a smaller amount of public open space is acceptable given the proximity of the site to established amenities. The Cork County Development, 2014 – 2020, recommends that public open space provision for new housing development shall be between 12% and 18% of the site for development. Paragraph 5.5.10 of the Cork County Development Plan, 2014 – 2020, is relevant for the appeal before the Board. This paragraph essentially outlines that in small residential infill schemes public open space may not be required. Paragraph 5.5.11 of the County Development Plan, 2014 – 2020, states the Council may require special development contributions to provide facilities in close proximity to development in lieu of on-site open space provision where it is considered prudent not to provide on-site provision due to streetscape or architectural considerations. The local authority has essentially applied the Special Development Contribution on this basis of Paragraph 5.5.11 of the County Development Plan.

Section 7.12 of the Development Management Guidelines, 2007, sets out guidance in relation to financial contributions. These guidelines advise in relation to special development contributions that the basis for the calculation of the contribution should be explained in the planning decision and how it is apportioned to the subject development.

In their response submission the local authority has put forward a case that apportions the €36,800 special contribution to the proposed development in lieu of public open space provision. The submission effectively states that the Council's 'Recreation and Amenity Policy, 2006'

requires that recreational facilities shall be provided as part of housing developments. Within Appendix A of the Council's 'Recreation and Amenity Policy, 2006' I would note that the following is stated under paragraph 4;

'where deemed appropriate by the Planning Authority, a cash equivalent may be accepted to enable the Local Authority provide some of the recreation facilities. In these circumstances the value of the facilities in question shall be arrived at by reference to the current housing land value and the construction cost of the said facilities'. The monies raised in this manner can only be spend on the provision of recreation facilities to serve the development from which the cash equivalent is raised.

I would consider that the local authority response addresses some of the issues outlined by the appellant in terms of basis of calculation. The Development Management Guidelines further advise that circumstances that might warrant the attachment of a special contribution condition would include where costs are incurred directly, as a result of, or in order to facilitate, the development in question are attributable to it. However the guidelines advise that in circumstances where the benefit of the specified works are more widespread, i.e. likely to benefit other lands then it is advisable to revise the general development contribution scheme.

I would consider that the benefit of the subject works which is the purpose of the Special Development Contribution, i.e. plan to extend the Ballincollig Regional Park and the woodlands and walking trails within are more widespread and they will benefit a large number of existing uses such as the overall town itself. I note that the Local Authority response submission states that the funding raised from this development will be used to increase the amenities close to the development. The Board will be aware of large-scale developments such as quarries and wind farms in rural areas where a special development contribution is required to reinstate public roads. In these cases it follows that the scale and intensity of the traffic generated from the large scale development, either during construction or operational phase, is likely to result in premature deterioration of the public road. These roads will need additional expenditure than that provided within the general development contribution scheme. As such the local authority, in my view, has not adequately explained, as is advised in the Development Management Guidelines, 2007, how the works or cost of works are specific and exceptional to the subject development.

Furthermore it is not possible, in my view, to refund or partially refund any uncompleted development by the local authority as the exact nature of the works is unclear and this is a requirement in Section 48(12) of the Act.

Therefore having regard to Section 7.12 of the Development Management Guidelines for Planning Authorities, 2007, I would consider that it would be more appropriate to revise the general Development Management Scheme in order to allow for the subject works.

8.0 CONCLUSION

The Board, based on the reasons and consideration set out below, considered that condition no. 3 cannot be properly described as a 'special contribution' condition formulated in accordance with the relevant provisions of Section 48(2)(c) of the Planning and Development Act 2000 (as amended) and directs the Council under sub-section (13)(b) of section 48 of the Planning and Development Act 2000, to omit said condition no. 3.

Reasons and Considerations:

The Board is not satisfied that condition no. 3 can be properly described as a 'special contribution' condition formulated in accordance with the relevant provisions of Section 48(2)(c) of the Planning and Development Act 2000.

Kenneth Moloney
Planning Inspector
11th March 2016