
An Bord Pleanála



Inspector's Report

Ref.: PL28. 246506

Development: Substantial demolition of existing workshop / garage & existing boundary wall (which is the eastern wall of Blackpool Retail Park); construction of new workshop / garage; alterations of remaining existing garage / workshop for use as ancillary stores; reconstruction of existing dwelling frontage for use as office, reception area, staff canteen & stores; & alterations to existing vehicle entrance.

32 Dublin Street, Blackpool, Cork.

PLANNING APPLICATION

Planning Authority: Cork City Council

Planning Authority Ref.: 16/36746

Applicant: Colin O'Keeffe

Type of Application: Permission

Planning Authority Decision: Grant subject to conditions

APPEAL

Type of Appeal: First Party v. Conditions

Observers: None.

INSPECTOR: Robert Speer

Date of Site Inspection: None required.

1.0 INTRODUCTION

1.1 This report relates to a first party appeal made under Sections 48(10) & 49(3A) of the Planning and Development Act, 2000, as amended, in respect of Condition Nos. 7 & 8 as attached to the notification of the decision of the Planning Authority to grant permission for the proposed development.

2.0 SITE LOCATION AND DESCRIPTION

2.1 The proposed development site is located in Blackpool Village, approximately 1.5km north of Cork City Centre, along the western side of Dublin Street and to the immediate east of the Blackpool Shopping Centre. It has a stated site area of 0.0052 hectares, is irregularly shaped, and forms a break in the wider terraced streetscape which characterises Dublin Street in that it is presently occupied by a vacant, semi-derelict, single storey dwelling house in addition to an open yard area with a garage / workshop building located to the rear of same.

3.0 DESCRIPTION OF PROPOSED DEVELOPMENT

3.1 The proposed development consists of the following:

- The substantial demolition of an existing workshop / garage & an existing boundary wall
- The construction of a new workshop / garage
- The change of use of part of the existing garage / workshop to use as ancillary storage
- The reconstruction of the existing dwelling house and the use of same as an office, reception area, staff canteen & stores
- The alteration (widening) of the existing vehicle entrance.

4.0 RELEVANT PLANNING HISTORY

4.1 On Site:

PA Ref. No. 15/36279 / ABP Ref. No. PL28.244823. Was refused on appeal on 1st September, 2005 refusing Colin O’Keeffe permission for the demolition of existing dwelling, demolition of existing garage and demolition of existing stone wall at western boundary wall (eastern boundary of Blackpool retail park), erection of new garage workshop with ancillary premises for the following reason:

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- Notwithstanding the previous use on the site, it is considered that the proposed development did not justify the demolition of the structure fronting Dublin Street and that the demolition of this building would have a detrimental impact on the visual amenities of the street. Furthermore, it is considered that the proposed design would not respond adequately to the street frontage. The proposed development would, therefore, seriously injure the visual amenities of the area and would be contrary to the proper planning and sustainable development of the area.

5.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION

5.1 Decision:

On 1st April, 2016 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 8 No. conditions. These conditions are generally of a standardised format whereas Condition Nos. 7 & 8, the subject of this appeal, state the following:

Condition No. 7:-

'Prior to the commencement of the proposed development, the Developer shall pay or enter into an agreement with the Planning Authority to pay a contribution to Cork City Council in respect of the following classes of public infrastructure and facilities benefitting development in the City of Cork and that is provided or that is intended to be provided by or on behalf of Cork City Council, in accordance with the General Development Contributions Scheme ("the GDCS scheme"):

Class 1 – Roads, Transportation Infrastructure and Facilities

Class 2 – Water and Drainage Infrastructure and Facilities excluding Water and Wastewater

Class 3 – Parks, Recreation, Amenity and Community Facilities

The present value of the contribution as determined under the GDCS made by Cork City Council on the 14th October, 2013 is

€53.8628 x 229 sq.m. (garage building) = €12,334.58

€53.8628 x 25% x 78 sq.m. (office building to front) = €1,050.32

which sums are subject to indexation in accordance with the Consumer Price Index prevailing at the date of payment and subject further to such

exemptions or reductions as apply to the proposed development having regard to the provisions of Table 5 of the GDC Scheme.

Reason: To comply with the General Development Contribution Scheme which was adopted by Cork City Council on 14th October, 2013 and in the interests of the proper planning and sustainable development of the area'.

Condition No. 8:-

'Prior to the commencement of the proposed development, the Developer shall pay or enter into an agreement with the Planning Authority to pay a contribution to Cork City Council in respect of the Cork Suburban Rail the Project specified in the Supplementary Development Contribution Scheme made by Cork City Council on the 14th October, 2013 ('the SDC Scheme') which project shall be carried out by the Rail Procurement Agency, or any other Organisation designated by the Government, pursuant to an agreement with Cork City Council and / or Cork County Council and which will, when carried out, benefit the proposed development.

The present value of the contribution as determined under the SDC Scheme is

€19.6764 x 229 sq.m. (garage building) = €4,505.90

€19.6764 x 25% x 78 sq.m. (office building to front) = €383.69

which shall be subject to indexation in accordance with the Consumer Price Index prevailing at the date of payment and subject further to such exemptions or reductions as apply to the proposed development having regard to the provisions of Table 4 of the SDC Scheme and subject further as follows:

Where no substantial works have been carried out or have not commenced within 10 years of the date of payment of the contribution, the Planning Authority shall refund the contribution in proportion to those works which have not been carried out together with any interest that may have accrued thereon for the duration it was held unexpended by the Planning Authority.

Reason: To comply with the Supplementary Development Scheme which was adopted by Cork City Council on 14th October, 2013 and in the interests of proper planning and sustainable development of the area'.

5.2 Objections / Observations:

None.

5.3 Internal Reports:

Environment, Waste Management & Control: No objection subject to conditions.

Drainage Division: Whilst an initial report states that there is no objection to the proposed development subject to conditions, another report prepared on the same date states that the applicant should be required by way of a request for further information to submit detailed proposals for the installation and subsequent maintenance of an interceptor / silt trap to serve the proposed development.

5.4 Prescribed Bodies / Other Consultees:

Irish Water: Recommends that further information be sought in respect of detailed proposals for the installation and subsequent maintenance of an interceptor / silt trap to serve the proposed development.

6.0 GROUNDS OF APPEAL

The grounds of appeal are summarised as follows:

- The terms of both the General Development Contribution Scheme and the Supplementary Development Contribution Scheme have not been properly applied.
- Table 5 of the General Development Contribution Scheme as adopted by the elected members of Cork City Council provides for reductions in respect of specified categories of development. In this respect it is submitted that the Planner's Report does not include for any explanation as to why the following reductions were not considered in the case of the subject proposal:
 - Where demolition occurs in conjunction with replacement development, including the partial or full demolition of a structure or building, the development contributions will be calculated based on the net additional floor area created, except where development contributions were not previously levied and/or where a change of use may occur, in which case other reductions specified in this table may be applicable.

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- In cases of redevelopment projects, only net additional development (e.g. a redevelopment totalling 200m² of which 150m² is replacing existing development, contributions to be levied on the net additional 50m²) will be charged, unless, in the opinion of the Planning Authority, the proposed development & the intended use constitutes a substantial intensification of use or is likely to increase demands on services, where contributions will be charged at the applicable rate on the full development.
 - In the case of a change of use, where, in the opinion of the Planning Authority, the intended use constitutes a substantial intensification of use or is likely to increase demands on services, development contributions will be levied on the basis of 25% of the rate to be applied (This may be subject to documentary proofs being furnished to the satisfaction of the Council. The burden of proof rests with the applicant / developer).
 - In the case of a change of use, where in the opinion of the Planning Authority, the intended use does not constitute a substantial intensification of use or is unlikely to increase demands on services, development contributions will not be levied (This may be subject to documentary proofs being furnished to the satisfaction of the Council. The burden of proof rests with the applicant / developer).
- The grant of permission issued by the Planning Authority approved the following:
 - a) The construction of a new garage with a total floor area of 229m² which will involve the partial demolition and reconstruction of an existing garage of 179m² giving a net increase of 50m².
 - b) The change of use to ancillary offices of a dormer dwelling of 78m².

Therefore, it is submitted that development contributions with regard to the garage should only have been levied on the net additional floorspace of 50m².

In the case of the former dwelling, it is considered that no contributions should be levied as the ancillary office / store would only be occupied during business hours and thus the demand on services is likely to be lower than if it remained in residential use.

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- It is acknowledged that the Planning Authority (or the Board on appeal) has the discretion not to apply the reductions if there would be a **substantial** intensification of use. However, it is submitted that there is no intensification of use in the subject proposal as a larger floorspace is required for the upgrading of the former repair garage in order to accommodate modern diagnostic equipment, hydraulic lifting gear, wheel alignment systems etc. and to provide adequate clearance around service bays for health and safety reasons.

The proposed use could therefore be considered to be more extensive than the use it will replace as it is likely to generate a lower level of activity from a larger floorspace. Given that the schemes allow for contributions to be levied on the additional floorspace there is no valid reason for contributions to also be levied on floorspace which is being replaced or for which a less intensive use is proposed.

- The Board is requested to recalculate the development contributions on the following basis:
 - *General Contribution:*
€53.8628 x 50m² (net increase in garage floorspace) = €2,693.14
 - *Supplementary Contribution:*
€19.6764 x 50m² (net increase in garage floorspace) = €983.83

7.0 RESPONSE TO GROUNDS OF APPEAL

7.1 Response of the Planning Authority:

- With regard to Table 5 of the Development Contributions Scheme which relates to '*reductions in respect of specified categories of development*' the Board is advised as follows:
 - *Where demolition occurs in conjunction with replacement development, including the partial or full demolition of a structure or building, the development contributions will be calculated based on the net additional floor area created, except where development contributions were not previously levied and/or where a change of use may occur, in which case other reductions specified in this table may be applicable.*

No evidence was found that development levies were previously imposed on the existing garage development and therefore a reduction in the development contributions payable was not considered appropriate.

- *In cases of redevelopment projects, only net additional development (e.g. a redevelopment totalling 200m² of which 150m² is replacing existing development, contributions to be levied on the net additional 50m²) will be charged, unless, in the opinion of the Planning Authority, the proposed development & the intended use constitutes a substantial intensification of use or is likely to increase demands on services, where contributions will be charged at the applicable rate on the full development.*

It is considered that the proposed development and the intended use will give rise to a substantial intensification of use which is likely to place an increased demand on services.

The previous garage was a much older building, presumably with older equipment, whereas the proposed garage comprises a 4-bay unit which can be assumed to utilise modern garage equipment. Accordingly, it is submitted that the throughput of vehicles is likely to be much higher than was previously the case and thus development contributions should be levied at the applicable rate on the entirety of the garage development.

- *In the case of a change of use, where, in the opinion of the Planning Authority, the intended use constitutes a substantial intensification of use or is likely to increase demands on services, development contributions will be levied on the basis of 25% of the rate to be applied (This may be subject to documentary proofs being furnished to the satisfaction of the Council. The burden of proof rests with the applicant / developer).*

It is considered that the proposed development involves 'redevelopment' rather than a 'change of use' and thus the foregoing provisions are not applicable to the subject proposal.

- *In the case of a change of use, where in the opinion of the Planning Authority, the intended use does not constitute a substantial*

intensification of use or is unlikely to increase demands on services, development contributions will not be levied (This may be subject to documentary proofs being furnished to the satisfaction of the Council. The burden of proof rests with the applicant / developer).

It is similarly considered that the proposed development involves 'redevelopment' rather than a 'change of use' and thus the foregoing provisions are not applicable to the subject proposal.

- Development contributions should be levied in respect of the total floor area of the garage building as opposed to a net floor area of 50m² as has been requested by the applicant.
- With regard to the following commentary contained in the grounds of appeal:

'whether any contributions should be levied on the change of use of the former dwelling to ancillary office / store as, unlike a family dwelling, the ancillary office / store would only be occupied during business hours and the demand on services would be lower than if it remained in residential use'

It is accepted that it may be appropriate to consider not imposing development contributions in respect of the change of use of the former dwelling to ancillary offices / storage on the basis that the demand on services would be lower than if it were to remain in residential use.

8.0 RESPONSE TO CIRCULATION OF PLANNING AUTHORITY'S SUBMISSION

8.1 Response of the Applicant:

- A development contribution scheme cannot be interpreted in a way that assumes that the scheme contravened the requirements of Section 48 of the Planning and Development Act, 2000, as amended.

Section 48(3)(b) of the Act states that in determining the contributions to be paid in accordance with the terms of the scheme *'any benefit which accrues in respect of existing development may not be included in any such determination'*. Therefore, it is submitted that a general development contribution scheme cannot be interpreted so as to apply contributions

retrospectively to development which was already in existence at the time the scheme itself was adopted.

The principle of not imposing contributions on existing floorspace is acknowledged in Sections 1.1 & 1.5 of the Cork City Council General Development Contribution Scheme and Section 2.5 of the Supplementary Contribution Scheme. Therefore, the provisions of the Schemes should be interpreted in the context that Table 2 of the General Scheme assumed that no contribution would be collected in regard to the established use of the floorspace which already existed in 2009.

- The ‘*Development Contributions, Guidelines for Planning Authorities, 2013*’ required planning authorities to commence a review of their existing development contribution scheme(s) by 31st March, 2013 and, therefore, revised contribution schemes for Cork City for the period 2013-2015 were published in draft form in June, 2013 and subsequently adopted on 14th October, 2013. The same schemes were also adopted for the period 2015-2016 with the only changes made in 2015 concerning the exclusion from Table 1 of the contributions payable to Irish Water and the adjustment of Table 2 to take account of the revised projection for the probable increase in floorspace during the period 2009-2015.

The Cork City Manager’s Report to the elected members on 12th September, 2013 advised as follows:

*‘the current Schemes contain an extensive list of exemptions and reductions, which have now been revised in line with the new Guidelines, particularly in relation to temporary permissions; **change of use permissions**; charge only for net additional area; broadband infrastructure; renewable energy development; protected structures; retention permissions’.*

Chapter 2: ‘*Supporting Economic Development*’ of the Scheme sets out the requirements of the Ministerial Guidelines and states the following:

‘the local authority must ensure that it avoids levying development contributions that are excessively high – development contributions are ultimately designed to offset only a portion of the costs of public infrastructure and facilities . . .

Planning authorities should consider whether there are any measures open to them to support new or existing enterprises in their areas by, for example, reduced development contribution rates, deferral payments, etc. . . .’

Therefore, planning authorities are required to include the following (*inter alia*) in their development contribution schemes:

- *Waivers in the case of change of use permissions, where change of use does not lead to the need for new or upgraded infrastructure / services or significant intensification of demand placed on existing infrastructure (including, for example, transport infrastructure);*
- *Provision to charge only net additional development in cases of redevelopment projects (e.g. a redevelopment totalling 200m² of 150m² is replacing existing development, contributions should only be levied on the additional 50m²);*
- *The practice of “double charging” is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing “planning gain” in an equitable manner. Authorities are reminded that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution.*

The principle of eliminating “double charging” also applies to any floorspace which existed at the time of the adoption of Section 48 of the Planning and Development Act, 2000, as amended. The benefits which accrued to existing floorspace were specifically excluded from the basis for determining new contributions on the assumption that the contributions relating to that floorspace were deemed to have already been paid through general taxation.

- *‘Where demolition occurs in conjunction with replacement development . . . the development contributions will be calculated based on the net additional floor area created’:*

The Planning Authority has rejected the suggestion that the aforementioned reduction is applicable in the subject case on the basis that it found no evidence that levies were previously paid in respect of the existing garage development on site. In response, it is submitted that the

reduction which normally applies to replacement development should only be negated in instances where levies were imposed but not collected. Therefore, the reduction should be available in cases where development pre-existed the Local Government (Planning and Development) Act, 1963 and / or the introduction of development contribution schemes under Section 48 of the Planning and Development Act, 2000.

Furthermore, it is considered that the relevant text in the development contribution schemes is poorly drafted and open to interpretation and thus the Board is advised that case law has established that in instances of differing interpretations the authority should opt for the constructive interpretation.

It is reiterated that the development contribution schemes were prepared on the basis that no charges would be levied on pre-existing development which was deemed to have already contributed to the cost of infrastructural services through general taxation. Therefore, Table 5 of the Scheme should not be interpreted in a way that allows for contributions to be retrospectively imposed on development which existed prior to the coming into effect of Section 48 of the Act.

- *'In cases of redevelopment projects, only net additional development . . . will be charged, unless, in the opinion of the planning authority, the intended use constitutes a substantial intensification of use':*

The Planning Authority has rejected the foregoing reduction on the grounds that the proposed change of use will give rise to a substantial intensification of use and thus is likely to place an increased demand on services. This conclusion would appear to be based on the report of the Senior Executive Planner which recommended that the proposed development be refused permission on the grounds that it would give rise to an intensification of the pre-existing use, however, that view is not representative of the formal opinion of the Planning Authority as the subsequent reports of the Senior Planner and the Director of Services concluded that *'given the limited scale of the overall proposal I do not consider that intensification of use is a significant issue at the site'*.

It should also be noted that the provision for reduced contributions for redevelopment projects only applies to the existing floorspace and that contributions will be paid in full for the additional floor area. In response to

the claim that there will be an increased throughput of vehicles leading to an increased demand on services, it is submitted that the increased floorspace is required to accommodate modern equipment and safety standards rather than to provide for an increased throughput. Any potential increase in the overall level of activity would be due solely to the effect of the proposed increase in the floor area and would be more than adequately covered by the development charges imposed on the net additional floorspace.

- *'In the case of a change of use where, in the opinion of the planning authority, the intended use constitutes a substantial intensification of use, development contributions will be levied on the basis of 25%'*.

In response to the Planning Authority's submission as regards the foregoing provisions, it is submitted that the definition of 'development' as set out in Section 3 of the Planning and Development Act, 2000 does not distinguish between a change in the nature of a use and a change in the intensity of an established use. Both changes are considered to constitute development if they are 'material' in planning terms, however, for the purposes of the development contribution schemes, a change of use is only material if it also involves an intensification of use and an increased demand on services. In this regard it is further submitted (as already outlined above) that the formal opinion of the Planning Authority was that there would be no significant intensification of use associated with the development permitted under PA Ref. No. 16/36746.

Without prejudice, even if it were considered that there would be a substantial intensification of use, the schemes only require that *'contributions will be charged at the applicable rate on the full development'*. The applicable rate for a substantial intensification of use is 25% of the standard rate on the floorspace involved.

- *'In the case of a change of use where, in the opinion of the planning authority, the intended use does not constitute a substantial intensification of use, development contributions will not be levied':*

In response to the Planning Authority's rejection of the foregoing, it is submitted that the key question in determining whether the full reduction applies is *'the opinion of the planning authority'* in regard to the nature of the change of use. In this respect, the opinion of the planning authority is

reflected in the reports of the Senior Planner and the Director of Services which recommended a grant of permission on the basis that intensification of use was not a significant issue. Therefore, the contribution schemes would not require the imposition levies on the established floorspace.

- Whilst the Planning Authority has acknowledged that it may be appropriate not to impose contributions on the change of use of the former dwelling to ancillary offices on the basis that the demand on services would be lower than if it were to be retained in residential use, it is submitted that the Planning Authority is legally obliged to implement the reductions set out in the Scheme not only where there is a reduction in the demand for services but also where there is no substantial intensification of use and where the development is unlikely to increase the demand on services.
- The method of calculating the development contributions has failed to have regard to the provisions of Table 5 of the Scheme.
- The Board is requested to recalculate the development contributions as follows:

General Contribution:

$$€53.8628 \times 50\text{m}^2 \text{ (net increase in garage floorspace)} = €2,693.14$$

Supplementary Contribution:

$$€19.6764 \times 50\text{m}^2 \text{ (net increase in garage floorspace)} = €983.82$$

9.0 NATIONAL AND REGIONAL POLICY

9.1 The 'Development Contributions, Guidelines for Planning Authorities' published by the Department of the Environment Community and Local Government in January, 2013 aim to provide non-statutory guidance on the drawing up of development contributions to reflect the radical economic changes that have impacted across all sectors since guidance was last issued in 2007.

10.0 GENERAL DEVELOPMENT CONTRIBUTION SCHEME

10.1 The *Cork City Council General Development Contribution Scheme, 2015-2016* was adopted on 15th September, 2015 and states that the basis for the determination of a development contribution is as follows:

- a) the amount of the actual estimated costs which are attributable in the years up to and including 2016, of providing public infrastructure and

- facilities (listed in Table 1 and Appendix I) but excluding any benefit which accrues in respect of existing development (i.e. the eligible cost).
- b) the aggregated floor areas in square metres of existing development and probable development (as set out in the General Development Contribution Scheme 2009-2015), in respect of residential and non-residential development (set out in Table 2) (i.e. the relevant floor space) and Class 2 amended for that as stated in section 1.2a.
 - c) the development contributions payable per square metre of residential and / or non-residential development, are determined by dividing the eligible cost by the relevant floor space (as detailed in Table 3).

Table 3 – ‘Development Contributions for Residential and / or Non-Residential Development per square metre floor area’ sets out the rates of contribution applicable in respect of the various classes of infrastructure for the aforementioned developments as follows:

Class	Class 1	Class 2	Class 3	Total
€per m²	37.17	0.89	16.61	54.67

Note 1: Classes of Public Infrastructural Development:

- Class 1: Roads, transportation infrastructure and facilities
- Class 2: Stormwater management infrastructure and facilities
- Class 3: Parks, recreation, amenity and community facilities

Note 2: The rates of contribution are subject to indexation and will be updated on a quarterly basis in line with the Consumer Price Index as published by the Central Statistics Office.

Note 3: The floor area of the proposed development (with the exception of items identified in *Table 4*) shall be calculated as the gross internal floor area of all relevant floorspace. Gross internal floor area is measured from the internal measurement of the floorspace on each floor of the building and includes internal walls, partitions, passages, storage areas, voids etc. *Table 4* identifies additional areas that are subject to contribution.

Table 5 of the Scheme sets out the percentage reductions applicable to specified categories of development.

11.0 SUPPLEMENTARY DEVELOPMENT CONTRIBUTION SCHEME

11.1 The ‘*Cork City Council Supplementary Development Contribution Scheme, 2015-2016*’ was adopted on 15th September, 2015 in accordance with Section 49 of the Planning and Development Act, 2000, amended, in respect of the Cork Suburban Rail Project which consists of works and the provision of rolling stock associated with the:

- Re-opening of and operation of suburban rail services on the Cork to Midleton line.
- Provision of new rail services between Blarney and Cork (some to continue to Mallow).
- Upgrading of rolling stock and frequency on the Cobh rail line as demand increases.

11.2 Within the city, the main elements of the project are the re-opening of Kilbarry Rail Station and the refurbishment / realignment of the Central (Kent) Station.

11.3 Section 2.4 of the Scheme states that it will apply to areas within a 1km corridor of the Cork-Blarney, Cork-Cobh and Cork-Midleton railway lines (excluding tunnel sections), (the disused) Kilbarry Railway Station and Kent Railway Station, in so far as they are situated within the functional area of Cork City Council (i.e. Cork City).

11.4 Section 2.5 sets out the basis for the determination of the appropriate rates of development contribution and states that whilst the Scheme was first adopted by Council in 2004 and again in 2009, as the project is still on-going, the Scheme as previously adopted will be continued with the rates of contribution being the same as those originally adopted but updated with reference to the Consumer Price Index. It also clarifies that the charges to be levied are based on the actual estimated costs of the project (Cork Suburban Rail), excluding any benefit that accrues in respect of existing development.

11.5 Section 2.6 of the Scheme specifies that the following rates of supplementary development contribution will be applied to the specified categories of development types, although these will be subject to indexation and will be updated on a quarterly basis in line with the Consumer Price Index as published by the Central Statistics Office:

Development Type	Unit	Rate €
Residential within 1km of rail line / station	Square metre	9.95
Retail, within 500m of the rail line / station	Square metre	19.89
Office and other non-residential development (excl. retail) within 1km of the rail line / station	Square metre	19.89

Note 1: The rates of contribution are subject to indexation and will be updated on a quarterly basis in line with the Consumer Price Index as published by the Central Statistics Office.

Note 2: The floor area of the proposed development (with the exception of items identified in Table 3) shall be calculated as the gross external floor area of all relevant floorspace. Gross external floor area is measured from the internal measurement of the floorspace on each floor of the building and includes internal walls, partitions, passages, storage areas, voids etc. Table 3 identifies additional areas that are subject to contribution

Note 3: For the purpose of the scheme, ‘office’ type development shall include: office based industry, banks, third level education, hospitals & surgeries and ‘retail type’ uses shall include restaurants, bars and retail services.

Note 4: It is the policy and practice of the Council to refuse water and / or sewer connections to any developer who fails to reach a satisfactory agreement with the Council on outstanding contributions in respect of the relevant permission / development. The supplementary development contribution is required for capital expenditure and therefore costs incurred for such matters as connections to such services are not included in the supplementary development contributions and are subject to separate connection fees.

11.6 Section 2.8 of the Scheme sets out a series of ‘*Exemptions and Reductions*’ and details a number of categories of development which will be exempt from the requirement to pay supplementary development contributions under the scheme.

11.7 The remainder of the Scheme set out the arrangements for the administration of the levy and states that it will cease on 31st December, 2016 2015 unless a new scheme is made beforehand, although it is stated that the Scheme can be varied by the resolution of Cork City Council at any time.

12.0 ASSESSMENT

12.1 This is an appeal made under the provisions of Section 48 & 49 of the Act and therefore the Board is restricted to considering Condition Nos. 7 & 8 only and cannot consider the proposed development *de novo*. I have therefore confined my assessment to the conditions that have been appealed.

12.2 Condition No. 7:

12.2.1 Following a review of the grounds of appeal it is clear that the key issue in respect of Condition No. 7 concerns whether or not the Planning Authority has properly applied the terms of its Development Contribution Scheme in seeking the payment of a development contribution in the sum of €13,384.90. More specifically, having regard to the actual nature of the development proposed, the issue arises as to whether or not the Planning Authority has correctly interpreted the provisions of Section 1.7: '*Exemptions and Reductions*' of its Development Contribution Scheme in deciding not to apply any of the percentage reductions applicable to specified categories of development as set out in Table 5 of the Scheme.

12.2.2 In assessing the subject appeal, it is of relevance in the first instance to note that there would appear to be no dispute between the applicant and the Planning Authority as regards the applicability of the Cork City Council General Development Contribution Scheme, 2015-2016, but rather there is disagreement as to the manner in which the Planning Authority has applied the terms of the Scheme. In this respect I would advise the Board that the Planning Authority has calculated the individual development contributions applicable for both the '*garage*' and '*office*' building elements of the overall proposal seemingly on the basis of their respective floor areas. Notably, whilst no provision has been made for any reduction in the rate of the development contribution deemed applicable to the new garage / workshop area, in its imposition of Condition No. 7 the Planning Authority has applied a 75% reduction in the rate of the development contribution for the proposed office building which would seem to derive from '*Table 5: Reductions in respect of specified categories of development*' of the Scheme wherein it is stated that in the case of a change of use which would give rise to a '*substantial intensification of use or is likely to increase demands on services*' development contributions will be levied on the basis of 25% of the rate to be applied i.e. an effective reduction of 75% in the development contribution rate. However, having reviewed the Planning Authority's calculations, I would have some reservations as regards the accuracy of the floor areas used in the determination of the applicable development contributions. For example, whilst a

floor area of 229m² has been used in the calculation of the development contribution applicable in respect of the proposed 'garage', the ground floor plan details a new interior floor area of only 185.5m² (excluding the proposed 'store' area which will be considered later in this report). Similarly, the floor area of 78m² used in the calculation of the contribution for the 'office' building appears to exceed that of the structure detailed on the submitted drawings (and may actually include the aforementioned proposed 'store' area). Therefore, at this point of my assessment it is appropriate to detail a breakdown of the respective floor areas of the individual elements of the proposed development on the basis of the available information as follows:

Existing:

- The existing garage / workshop: Total Internal Floor Area: 146.64m²
- The existing dwelling house: Internal Floor Area: 53m²

Proposed:

- The proposed garage / workshop: Internal Floor Area: 185.5m² (net additional garage floorspace: 38.86m²)
- The proposed store area (arising from the partial change of use of the garage / workshop): Internal Floor Area: 28m²
- The proposed office area etc. (arising from the change of use of the dwelling house): Internal Floor Area: 53m².

12.2.3 Having established the correct reckonable floor areas of the various individual elements of the proposed development, it is necessary to review those aspects of the development in order to determine whether or not any of the exemptions or reductions set out in Table 5 of the Scheme can be held to apply. In this respect it should be noted that the description of the proposed development as detailed in the public notices and the wider application documentation refers to the substantial demolition of an existing workshop / garage, the construction of a new workshop / garage, the alteration of part of the existing garage / workshop for use as ancillary stores, and the reconstruction of the existing dwelling house for use as an office & reception area etc. Accordingly, on the basis that the proposed development includes a considerable element of demolition and the subsequent construction of a replacement building it would seem reasonable to suggest that the proposal could potentially avail of the following provision contained in Table 5 of the Scheme whereby an allowance is effectively made for the floorspace of any building proposed for demolition which will be replaced by new construction as part of a wider redevelopment proposal:

'Where demolition occurs in conjunction with replacement development, including the partial or full demolition of a structure or building, the development contributions will be calculated based on the net additional floor area created, except where development contributions were not previously levied and/or where a change of use may occur, in which case other reductions specified in this table may be applicable'.

12.2.4 However, in response to the grounds of appeal the Planning Authority has asserted that the foregoing allowance is not applicable in respect of the proposed development on the basis that no evidence was found that development levies were previously imposed on the existing garage development, although this position has been countered by the applicant in a further submission which has suggested that the reduction which normally applies to replacement development should only be negated in instances where levies were imposed but not collected and that the reduction should be available in cases where the development in question pre-existed the Local Government (Planning and Development) Act, 1963 and / or the introduction of development contribution schemes under Section 48 of the Planning and Development Act, 2000.

12.2.5 An alternative position is that the subject proposal comprises a *'redevelopment project'* and thus the following provision applies (please refer to Table 5 of the Scheme):

'In cases of redevelopment projects, only net additional development (e.g. a redevelopment totalling 200m² of which 150m² is replacing existing development, contributions to be levied on the net additional 50m²) will be charged, unless, in the opinion of the Planning Authority, the proposed development & the intended use constitutes a substantial intensification of use or is likely to increase demands on services, where contributions will be charged at the applicable rate on the full development'.

12.2.6 Notably, it would appear that the Planning Authority gave due consideration to the foregoing provision before ultimately determining that it was inappropriate to apply same on the basis that the submitted proposal was likely to give rise to a substantial intensification of use and would therefore place an increased demand on local services.

12.2.7 Regrettably, the Development Contribution Scheme provides no clear basis on which to draw a distinction between a development proposal which involves *'demolition . . . in conjunction with replacement development'* or a

proposal which comprises a *'redevelopment project'* and thus I would suggest at the outset that difficulties arise in attempting to categorise the subject proposal in order to apply either of the aforementioned exemptions / reductions as listed in Table 5 of the Development Contribution Scheme. However, it is of relevance to note that Section 1.9 of the Scheme states that *'Although a development may qualify for a number of reductions / exemptions under the Scheme, the Council will grant only one category of reduction / exemption, whichever is the most financially advantageous to the applicant'*. Accordingly, I am inclined to conclude that it is appropriate to classify the subject proposal as a *'redevelopment project'* in line with the position adopted by the Planning Authority given that such a categorisation would seem to potentially offer the applicant the most financially advantageous rate of development contributions in that the question of charging for any existing floorspace which has not previously been subject to a development levy does not arise, although I would emphasise that any *'savings'* offered by such a classification are effectively subject to the caveat that the proposed development will not result in any *'substantial intensification of use'*.

12.2.8 With regard to the specifics of the proposed development and whether or not it is likely to give rise to an intensification of use, it should be noted that if the Board were to determine that the proposed development were to place an increased demand on services then the entirety of the floorspace of the development proposal would necessitate the application of the full rate of the development contribution as distinct from only applying to any additional net increase in floor area. In the case of the subject proposal, it is notable that the whilst the case planner initially recommended that the proposed development be refused planning permission on the basis that it would give rise to an unacceptable *'intensification of a pre-existing use'* which would seriously injure the residential amenities of the surrounding area, this recommendation was superseded by that of the Senior Planner which expressly stated that given the limited scale of the overall proposal it was not considered that intensification of use was a significant issue and therefore subsequently recommended a grant of permission. It is this later report which ultimately formed the basis of the decision of the Planning Authority to grant permission for the proposed development, although the calculation of the development contributions was referred back to the original case planner. Accordingly, it is at this point in my assessment that I am inclined to concur with the applicant as regards the implications of the rationale for the grant of permission as set out in the report of the Senior Planner with regard to the imposition of the applicable development contributions.

12.2.9 Given that the decision of the Planning Authority to grant permission is grounded in the report of the Senior Planner (as then accepted by the Director of Services) and that this concluded that there was no significant intensification of use associated with the submitted proposal, in my opinion, the imposition of any development contribution must take due cognisance of such a conclusion. In this regard I would suggest that the calculation of the general development contribution as set out in the decision of the Planning Authority is fundamentally flawed as the full rate of the development contribution has been applied to the entire floor area of the overall development (save for the office building) on the basis that it will give rise to a substantial intensification of use which would be likely to place an increased demand on services despite the actual rationale for the grant of permission in the first instance clearly being that no significant intensification of use is likely to occur. In effect, the calculation of the development contribution with regard to the redevelopment of the workshop / garage area as imposed by Condition No. 7 does not reflect the grounding of the grant of permission. Therefore, it is my opinion that it would be inappropriate to apply a development contribution to the full extent of the proposed development and that a charge should only be applied to the net additional floorspace pursuant to those provisions applicable to 'redevelopment projects' as set out in Table 5 of the Scheme. Accordingly, I would suggest that the correct development contribution applicable in respect of the proposed workshop / garage redevelopment can be calculated on the basis of the following figures:

- The Proposed Garage / Workshop (including the proposed storage area which is considered to be ancillary to same):

Internal Floor Area: $185.5\text{m}^2 + 28\text{m}^2 = 213.5\text{m}^2$

- The Existing Garage / Workshop:

Internal Floor Area: 146.64m^2

- Net Additional Workshop / Garage Floor Area: 66.86m^2

Net Additional Floor Area: $66.86\text{m}^2 \times \text{€}53.8628 / \text{m}^2$ (present indexation) = **€3,601.26**

12.2.10 Therefore, in my opinion, the redevelopment of the existing garage / workshop structure will attract a development contribution in the amount of €3,601.26.

12.2.11 With regard to the change of use of the existing dwelling house on site to use as ancillary office accommodation etc. associated with the operation of the main workshop area, from a review of Condition No. 7 it is apparent that a 75% reduction in the rate of the development contribution has been applied by the Planning Authority, and although it is not entirely clear from the available documentation, this reduced rate would seem to have been applied pursuant to the following provision of Table 5 of the Development Contribution Scheme:

'In the case of a change of use, where, in the opinion of the Planning Authority, the intended use constitutes a substantial intensification of use or is likely to increase demands on services, development contributions will be levied on the basis of 25% of the rate to be applied'.

12.2.12 However, in response to the grounds of appeal, the Planning Authority has conceded that it may not be appropriate to impose any development contributions in respect of the change of use of the former dwelling to ancillary offices / storage on the basis that the demand on services would be lower than if the structure in question were to remain in residential use. In effect, by stating the foregoing, the Planning Authority has suggested that a 100% reduction in the applicable development contribution rate would be appropriate with regard to the change of use in accordance with the following provision of Table 5 of the Scheme:

'In the case of a change of use, where in the opinion of the Planning Authority, the intended use does not constitute a substantial intensification of use or is unlikely to increase demands on services, development contributions will not be levied'.

12.2.13 In assessing this aspect of the proposed development, I would advise the Board at the outset that the floor area of the 'store' which forms an integral part of the redeveloped garage / workshop structure should be excluded from the calculation of any development contribution applicable in respect of a 'change of use' in order to avoid double-charging. Therefore, any contribution pertaining to the 'change of use' should only relate to the floor area of the existing dwelling house i.e. 53m².

12.2.14 Whilst the Planning Authority has seemingly applied a reduced development contribution rate in respect of the proposed change of use of the existing dwelling house on site on the basis that the intended use constitutes 'a substantial intensification of use' in accordance with the provisions of Table 5 of

the Scheme (as referenced in Section 10.2.11 above), I would draw the Board's attention again to Section 1.9 of the Scheme which states that *'Although a development may qualify for a number of reductions / exemptions under the Scheme, the Council will grant only one category of reduction / exemption, whichever is the most financially advantageous to the applicant'*. In my opinion, this provision could be interpreted as preventing the 'subdivision' of an overall development proposal into its individual component parts and thus would preclude the application of different development contribution rates within a single development proposal. Indeed, if such an interpretation were to be deemed appropriate by the Board, it would seem that the Planning Authority has erred in its calculation of this aspect of the relevant development contributions. However, despite the apparent application of this reduced rate in the imposition of Condition No. 7, in its response to the grounds of appeal the Planning Authority has actually stated that the proposed development involves 'redevelopment' rather than a 'change of use' and thus the foregoing provisions are not applicable to the subject proposal.

12.2.15 Notwithstanding my reservations as regards the use of multiple development contribution rates within a single planning application / development proposal, on the basis that the proposed 'redevelopment' project will not give rise to any substantial intensification of use, as has been acknowledged in both the report of the Senior Planner and the response of the Planning Authority to the grounds of appeal, in my opinion, it can be determined that the change in the use of the existing dwelling house to ancillary offices etc. will not attract any development contributions pursuant to those provisions of Table 5 of the Development Contribution Scheme as have previously been referenced in Section 12.2.5 of this report.

12.2.16 In the event that the Board does not concur with the conclusions drawn in the preceding paragraph, consideration should be given to the application of either of the following contribution rates derived from Table 5 of the Scheme:

- *In cases of redevelopment projects, only net additional development (e.g. a redevelopment totalling 200m² of which 150m² is replacing existing development, contributions to be levied on the net additional 50m²) will be charged, unless, in the opinion of the Planning Authority, the proposed development & the intended use constitutes a substantial intensification of use or is likely to increase demands on services, where contributions will be charged at the applicable rate on the full development:*

'Additional' Net Floor Area: $53\text{m}^2 \times \text{€}53.8628 / \text{m}^2 = \text{€}2,854.72$

(N.B. This is in addition to the development contribution applicable in respect of the additional floor area of the proposed workshop / garage)

Or

- *In the case of a change of use, where, in the opinion of the Planning Authority, the intended use constitutes a substantial intensification of use or is likely to increase demands on services, development contributions will be levied on the basis of 25% of the rate to be applied'.*

Change of Use Floor Area: $53\text{m}^2 \times \text{€}53.8628 / \text{m}^2$ at a reduced rate of 25% = **€13.68**

12.2.17: Therefore, on the basis of the foregoing, I am recommending that the amount of the applicable development contribution sought by Condition No. 7 be amended to **€3,601.26**.

12.3 Condition No. 8:

12.3.1 Similar concerns have been raised as to whether or not the Planning Authority has properly applied the terms of its Supplementary Development Contribution Scheme in seeking the payment of a supplementary development contribution in the sum of €4,889.59 and if it has correctly interpreted the provisions of Section 2.8: '*Exemptions and Reductions*' of the Scheme in deciding not to apply any of the percentage reductions applicable to specified categories of development as set out in Table 4 of same.

12.3.2 Having reviewed the available information, it is apparent that the Supplementary Development Contribution Scheme includes various provisions similar to those contained in the General Development Contribution Scheme and, therefore, in order to avoid unnecessary repetition, I would advise the Board that my conclusions as regards the interpretation and application of the General Development Contribution Scheme are equally applicable to the Supplementary Development Contribution Scheme. In effect, the subject proposal comprises a 'redevelopment project' which has been held by the Planning Authority in its rationale for the grant of permission as not giving rise to a substantial

intensification of use which would be likely to place an increased demand on services. Therefore, in my opinion, the redevelopment of the existing garage / workshop structure will attract a development contribution in the amount of **€1,315.56** which can be calculated as follows:

Net Additional (External) Floor Area (Garage / Workshop): $66.86\text{m}^2 \times \text{€}19.6764 / \text{m}^2$ (present indexation) = **€1,315.56**

12.3.3 With regard to the change of use of the existing dwelling house on site to use as ancillary office accommodation etc. associated with the operation of the main workshop area, on the basis that the proposed 'redevelopment' project will not give rise to any substantial intensification of use, as has been acknowledged in both the report of the Senior Planner and the response of the Planning Authority to the grounds of appeal, in my opinion, it can be determined that the change in the use of the existing dwelling house to ancillary offices etc. will not attract any development contributions pursuant to the relevant provisions of Table 4 of the Supplementary Development Contribution Scheme.

N.B. The Board is advised that the Supplementary Development Contribution Scheme differs from the General Development Contribution Scheme in that the floor area considered to be reckonable for the purposes of calculating the applicable contributions is referred to as the '*gross external floor area*' as opposed to the '*gross internal floor area*'. Whilst this would appear at the outset to give rise to potential difficulties in determining the actual floor area reckonable for the purposes of calculating the applicable contribution in respect of the subject proposal, I would refer the Board to the definition of 'gross external floor area' provided in 'Note 2' of the Supplementary Development Contribution Scheme which states the following:

'The floor area of the proposed development shall be calculated as the gross external floor area of all relevant floorspace. Gross external floor area is measured from the internal measurement of the floorspace on each floor of the building and includes internal walls, partitions, passages, storage areas, voids etc.'

In effect, the foregoing definition accords with that provided for 'gross internal floor area' in the General Development Contribution Scheme and thus seemingly refers to the same extent of floor area.

13.0 RECOMMENDATION

On the basis of the foregoing, I consider that the Planning Authority has incorrectly applied the terms of both its Development Contribution Scheme and its Supplementary Development Contribution Scheme and, therefore, it is my recommendation that the Planning Authority should be directed accordingly to amend Condition Nos. 7 & 8 for the reasons and considerations set out hereunder:

DECISION

The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended by section 30 of the Planning and Development Act, 2010, considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme and the Supplementary Development Contribution Scheme for the area had not been properly applied in respect of conditions numbers 7 and 8 and directs the said Council under subsection (10) (b) of section 48 of the 2000 Act, to **AMEND** condition numbers 7 and 8 as follows for the reasons stated:

CONDITIONS

7. The developer shall pay to the planning authority a financial contribution of €3,601 (three thousand, six hundred and one euro) in respect of public infrastructure and facilities benefiting development in the 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 Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition 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 to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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8. The developer shall pay to the planning authority a financial contribution of €1,315 (one thousand, three hundred and fifteen euro) in respect of the Cork Suburban Rail Project in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition 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 to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission

REASONS AND CONSIDERATIONS

The Board considered that in calculating the amount to be paid with respect to public infrastructure and facilities benefiting development in the area of the planning authority, the relevant terms of the Cork City Council General Development Contribution Scheme, 2015-2016 and the Cork City Council Supplementary Development Contribution Scheme, 2015-2016, as adopted, had been improperly applied in respect of condition numbers 7 and 8 in that the proposed development comes within a specified category of development subject to an exemption or reduction in the amount payable pursuant to Tables 5 and 4 of the respective Schemes.

Signed: _____

Robert Speer
Inspectorate

Date: _____