



An
Bord
Pleanála

Inspector's Report PL 28.249354

Development	Upgrade and extend the existing Lee Road Water Treatment Plant, with all associated site works.
Location	Lee Road, Cork.
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	16/37183
Applicant(s)	Uisce Éireann/Irish Water
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	First Party against Condition
Appellant(s)	Uisce Éireann/Irish Water
Observer(s)	None
Date of Site Inspection	None
Inspector	Michael Dillon

1.0 Site Location and Description

1.1. The site, with a stated area of 3.7ha, is located on the north side of the Lee River in Cork City. It is accessed from the Lee Road, which forms the northern boundary. To the east, the site abuts the old waterworks. To the south, the site abuts the Lee River – scrub vegetation on the river bank and atop a 5-6m high flood-protection berm partially screening the waterworks. To the west, the site abuts a canoe club. To the northwest, the site abuts the UCC Environmental Research Institute building. Ownership of the site is stated to be vested in Cork City Council, with the access road in the ownership of University College Cork. The existing access from the Lee Road is to be closed up following completion of development. The gross floor area of existing buildings is stated to be 4,098sq.m.

2.0 Proposed Development

2.1. Permission sought on 5th December 2016, for upgrade works to the existing municipal Lee Road Water Treatment Plant. The works involve demolition of 354sq.m of floorspace (raw water pump house and the construction of 4,286.3sq.m of floorspace – much of it clad with pressed metal panels (coloured green). Surface water is discharged back to the Lee River. Foul waste is discharged to the public foul mains. Essentially, most of the old waterworks will be decommissioned (with the exception of the open sedimentation tanks which are to be retained and roofed) with a new water treatment plant to be constructed on lands immediately to the west of the old plant.

2.1.1. The application is accompanied by the following-

- Planning Report from Halcrow Barry (dated November 2016).
- Natura Impact Statement from Halcrow Barry (dated November 2016).
- Letter of consent from CCC to the making of the application.
- Letter of consent from UCC to the making of the application.
- Short Archaeological Report from Halcrow Barry Ltd, referring to work carried out by Flor Hurley Associates.
- Flood Risk Assessment from Halcrow Barry (dated September 2016).

- Traffic Impact Assessment from Halcrow Barry (dated September 2016).
- Stage 1 Road Safety Audit from Halcrow Barry (dated November 2016).
- Landscape & Visual Impact Assessment (including series of 4 no. A3 photomontages from Brady Shipman Martin (dated December 2016).
- Services & Infrastructure Report from Halcrow Barry (dated November 2016).

2.2. Following a request for additional information, revised proposals were received on 10th July 2017, as follows-

- Slight change to site boundary to incorporate area for new smolt fish screen.
- Details of revised designs of buildings (particularly the administration building and laboratory building) and visual mitigation measures to be employed.
- Indication of smolt fish screen to be used on water intake.
- Indication of lighting of buildings and how it might affect a nearby otter holt.

2.2.1. The submission is accompanied by the following-

- Series of four updated photomontages (dated May 2017).
- Architectural Design Statement from Fewer Hamilton & Partners (dated May 2017).
- Industrial Archaeology Report from Dr. Elena Turk (dated May 2017) – relating to the single-storey, raw water pump house to be demolished.
- Revised public notices.

3.0 Planning Authority Decision

By Order dated 4th September 2017, Cork City Council issued a Notification of decision to grant planning permission, subject to 36 no. conditions. It is not proposed to summarise the relevant conditions, as the 1st Party appeal relates only to condition no. 36, which states-

Prior to 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

benefiting 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”) [sic]:

Class 1 – Roads, Transportation Infrastructure and Facilities

Class 2 – Water and Drainage Infrastructure 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 28th November, 2016 is €208,974.07, which sum is 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 2017-2021, which was adopted by Cork City Council on 28th November, 2016, and in the interests of the proper planning and sustainable development of the area.

4.0 **Planning History**

There is no recent relevant planning history relating to payment of development contributions for developments such as this. Under Part 8 of the Planning & Development Act 2000, plans were approved to upgrade the treatment works in 2003 and 2013 – on the latter date following severe flooding from the Lee River in November 2009.

5.0 **Development Plan**

The relevant document is the Cork City Development Plan 2015-2021. The majority of the site is zoned ‘ZO15’ (Public Infrastructure and Utilities). Section 12.4 states- “The Lee Road Treatment Plan requires upgrading in order to address identified capacity issues, some treatment deficiencies, and susceptibility to flooding. Upgrades to the treatment plant are included in Uisce Éireann/Irish Water’s Proposed Capital Investment Plan 2014-2016...” An Area of High Landscape Value

overlays the subject site – associated with the Lee River valley. Some of the buildings/plant within the water treatment works is considered to be a Protected Structure – PS619 (Engine boiler house and pump house). The Lee Road is a designated Scenic Route – S37. The existing waterworks is also a Recorded Monument – CO074-056.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal from Uisce Éireann/Irish Water, received by the Board on 2nd October 2017, is made under section 48, can be summarised in bullet point format as follows-

- CCC determined the amount of contribution on a per sq.m basis for floor areas as follows-

Administration building	419.4
ESB building	14.0
Treated water pumping	467.5
New raw water pumping station & chemical dosing	255. [sic]
Sludge dewatering building	381.1
Store building	99.2
Raw water pump sump	84.0
Filters	900.0
Reservoir	857.0
Sludge tanks	96.0
Flocculation tanks	242.0
Chlorine & fluorine tanks	39.0
Filter washwater holding tanks	262.0
Clean backwash water tank	170.0
Roofing of sedimentation tanks	1,224.0

- The rate of calculation was €52.2396 per sq.m.
- The Scheme has not been properly applied, as only the Administration building should have been included – 419.4sq.m. This would result in a contribution requirement of €21,909.29.
- The implementation of the Development Contribution Scheme will have an impact on the ability of Uisce Éireann/Irish Water to carry out its core function of providing water services on a national basis.
- The financial contribution condition is seeking to levy one arm of the state (Uisce Éireann/Irish Water) to fund another arm of the state (Cork City Council).

6.2. Planning Authority Response

The response of Cork City Council, received by the Board on 3rd November 2017, can be summarised in bullet point format as follows-

- The contribution was calculated under the rates applicable in the 2017-2020 Scheme.
- The reckonable area for contributions was taken to be all buildings or covered structures – 4,354.3sq.m
- Uncovered plant or equipment was not included in the calculation.
- The inclusion of covered tanks/structures was considered to be in line with Table 4 of the Scheme – which outlines additional areas that are subject to a contribution. Whilst Table 4 does not specifically mention reservoirs or tanks, it does say that any structure covered by a roof/ceiling/or similar structure will have the entire area included in the area for the calculation of the contribution. It was considered that covered tanks would fall under this category.

6.3. Further Responses

The response of Cork City Council was referred to Uisce Éireann/Irish Water for comment on or before 20th December 2017. There was no response received.

7.0 Assessment

- 7.1. This appeal is against a section 48 Development Contribution Scheme condition only (Condition no. 36). The Board is restricted to consideration of the proper application of the current Development Contribution Scheme for Cork City Council, under the terms of section 48 of the Planning and Development Act, 2000 (as amended). Section 139(1) of the Act provides that, where the Board is satisfied, having regard to the nature of the condition or conditions appealed, that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted, the Board may decide to attach, amend or require the removal of the relevant condition(s). I note that section 48(10)(c) allows an applicant to commence development, notwithstanding a section 48 appeal to the Board, provided it furnishes to the planning authority, security for payment of the full amount of the contribution, as specified in the condition. The Board has no way of knowing if this has or will be done, short of writing to the parties and requesting them to indicate if security has been given or will be given. For this reason, the Board should restrict itself to consideration of the application of the Development Contribution Scheme.
- 7.2. The relevant Scheme was adopted by CCC on 28th November 2016; and a copy of the General Development Contribution Scheme 2017-2021, is included in the map pouch which accompanies this Inspector's Report. Development charges in respect of water and wastewater facilities are no longer charged by CCC, since the provision of these services was transferred to Uisce Éireann/Irish Water. However, management of stormwater remains the responsibility of CCC, and provision of contributions towards investment in this type of infrastructure is included in the current Scheme. The contribution per sq.m is calculated at €52.70. Indexation, based on the Consumer Price Index (calculated quarterly), is probably what reduced this figure to the €52.2396 used by CCC in calculating the Development Contribution in this instance. Gross internal floor area is used for calculation of the contribution. Table 5 of the Scheme provides for exemptions – paragraph 5.24 indicating that proportionate reduction in respect of demolition will be allowed for – where demolition is necessary to facilitate the development.
- 7.3. The schedule of floor areas which Uisce Éireann/Irish Water claims that CCC used in determining the total amount of contribution adds up to 5,510sq.m: so clearly not all

of the items listed were included in the calculation of the development contribution, as such a large floor area was not used by the Council. CCC states that all buildings and covered structures were included in the total floor area of contribution calculation – coming to 4,354.3sq.m. Of this total – an allowance was made for the demolition of the raw water pump house building (354sq.m) – resulting in a net contribution area of 4,000.3sq.m. At a rate of €52.2396 per sq.m – the total contribution required was €208,974.07. I note that the levy calculation was set down in a Roads Design (Planning) Report – dated 3rd February 2017 (and signed/dated on page 7 of 9). On page two of this Report, the various elements of the scheme and the relevant floor areas are listed – and the list is taken from a schedule provided by the applicant. The floor areas (including the 354sq.m for demolition) is stated to add up to 4,354.3sq.m. And when allowance of 354sq.m for demolition is made – the total comes to 4,000.3sq.m. The difficulty with this sum is that the figures listed do not add up to 4,354.3sq.m. They in fact add up to 5,864.4sq.m. This gives an unaccounted for floor area of 1,510.1sq.m – or rather a floor area of this amount which does not appear to have been levied for.

- 7.4. Appendix C of the application documentation, submitted on 5th December 2016, confirms that the floor area of buildings/roofed areas concerned is 5,864.3sq.m. It should in fact be 5,864.4sq.m, but this is a minor error. The Appendix goes on to list existing floor areas at the water treatment plant at 4,098sq.m – which includes the raw water pumping station (raw water pump house) of 354sq.m. This application will largely result in the shifting of the waterworks to the west – with most of the old buildings remaining on the eastern part of the site. Only the raw water pump house is indicated for demolition – the rest of the buildings/plant is indicated as remaining in place. This plant is indicated for demolition following of the construction of the Shanakiel Rising Main. It is not indicated when this is expected to happen. However, for the purposes of this appeal, the only demolition proposed is 354sq.m; and so only this amount of floor area can be deducted for the purposes of calculation of the contribution amount. Existing sedimentation tanks (part of the current water treatment plant) are to be retained, and are to be enclosed within a shed structure as part of the new waterworks development.
- 7.5. The applicant argues that only the new administration building should be included in the calculation, as the rest is not floor area in the traditional sense, being just roofing

and covering for plant, tanks and reservoirs. The appellant calculates that the floor area of the administration building proposed is 419.4sq.m. At a rate of €52.2396 per sq.m, the amount of contribution required should be €21,909.29 only. I would note that the floor area of this building was reduced by approximately 12sq.m in the additional information submission of 10th July 2017, but that this reduction in floor area is not commented upon by either the appellant or CCC.

- 7.6. CCC contends that all roofed areas should be included in the calculation of the development contribution. Uncovered plant or equipment was stated not to have been included in the floor area calculation. Reference is made to Table 4 of the Development Contribution Scheme 2017. This Table refers to four additional types of area – viz. (a) carport/undercroft; (b) building on stilts or partially on stilts; (c) basement/underground parking/service areas; (d) overhangs (including balconies). It is contended by CCC that this Table indicates that all roofed areas are to be included for calculation of development contributions. Whilst, the Table is not exhaustive, and clearly does not refer directly to water treatment plants, I would be satisfied that it clearly indicates that all covered/roofed areas are to be included. Condition 36 of the Notification of decision to grant planning permission, specifically refers to Table 5 of the Development Contribution Scheme, and an allowance has been made for demolition works. The argument that the development contribution applied merely transfers money from one emanation of the state to another (from Uisce Éireann/Irish Water to Cork City Council), may well be true, however, the Scheme does provide for exemptions for types of organisations/bodies, of which Uisce Éireann/Irish Water is not one. Therefore, whatever the rights and wrongs of such exclusion, I would be satisfied that the Development Contribution Scheme applies to the applicant.
- 7.7. For the purposes of determining which floor areas should be included, I have calculated relevant floor areas (in whole sq.m) as follows. I note that there are two buildings/structures/plant items, shown on the drawings submitted, which do not appear on the schedule of floor areas – (a) the Lime dosing house and (b) the UV unit. I have taken floor areas from drawings submitted – in the case of the UV unit, estimating floor area from the site layout drawings in the absence of any drawings for this item. The floor area of the alum pumping station should be discounted, as the small new building will replace an older one.

Administration building	407	
ESB sub-station building		14
Treated water pumping building	467	
New raw water pumping station & chemical dosing	255	
Sludge dewatering building	381	
Store building	94	
Filters	424	
Flocculation tanks	242	
Clean water backwash tank	170	
Roofing of existing sedimentation tanks	1,224	
Lime dosing house	24	
UV unit	45	
Total	3,747sq.m	

The amount of the development contribution charged should be 3,747 x. €52.2396 = €195,741.78. Condition 36 should be amended accordingly, to reflect the lower whole euro amount.

8.0 Recommendation

I recommend that condition 36 be amended as set down below.

9.0 Reasons and Considerations

Having regard to the nature of the proposed development and the provisions of the current Cork City Council Development Contribution Scheme 2017-2021, it is considered that condition no. 36 of the Notification of decision to grant planning permission, issued by Cork City Council on the 4th day of September 2017, should be amended to reflect a floor area subject to the Scheme, calculated by the Board to be 3,747sq.m, at the rate of €52,2396 per sq.m. The condition should be amended as follows-

36. The developer shall pay to the planning authority, a financial contribution of €195,741 (One hundred and ninety-five thousand, seven hundred and forty-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.

**Michael Dillon,
Planning Inspectorate.**

2nd January 2018