



An
Bord
Pleanála

Inspector's Report ABP-300056-17

Development

Construction of 200 no. residential units (comprising 86 no. semi-detached dwellinghouses, 70 no. townhouses, 22 no. ground-floor apartments with 22 no. duplex apartments overhead), creche and all associated ancillary development works including the completion of a roundabout and road improvements onto Maryborough Hill, footpaths and cycle lanes, bus stop, foul and storm water drainage, boundary treatments, landscaping and amenity areas and the removal of existing electricity transformer/substation and construction of new electricity substation.

Location

Maryborough Ridge, Moneygurney, Douglas, Co. Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

167271

Applicant(s)

George Maloney

Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	First Party
Appellant(s)	George Maloney
Observer(s)	Transport Infrastructure Ireland
Date of Site Inspection	12 th January 2018
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The site, with a stated area of 9.693ha, is located on the southeastern fringe of suburban Cork. The site is an elevated one, on or about the 110m contour – sloping uphill from northwest to southeast. The southern part of the site contains grassed fields divided by hedgerows. The northern part of the site contains a number of substantial soil and subsoil mounds (up to 10m high) – associated with earlier phases of building to the northeast. The portion of the site for housing is securely fenced-off from surrounding housing development. The northern portion of the housing site (to the rear of An Radharc) is a disused site compound – fenced and gated. There are fine views from the housing portion of the site across the N28 to the west.
- 1.2. Access to the site is from Maryborough Hill (L2470), where a new roundabout has recently been constructed (but not completed) to serve as access to housing lands on either side. The 50kph speed restriction applies in this area. Bus route 216 serves Maryborough Hill. There is a complete footpath on the east side of Maryborough Hill in this vicinity, whilst that on the west side does not extend the full length of the road. The half-completed roundabout is currently serving as access to a building site, where houses in the Hazel Hill estate are nearing completion, and work has commenced on lands immediately to the south of The Oaks and to the west of Hazel Hill (within the current appeal site, as outlined in red – as part of permission ref. PL 04.234318).
- 1.3. To the northwest, the site abuts the N28 and the grade-separated Carr's Hill interchange with the R855 Regional Road. Noise from traffic on the N28 is noticeable across the site. A portion of land on the boundary with this interchange has been excluded from the site to facilitate future upgrading of this interchange (as part of 04.MA0014, which is currently with An Bord Pleanála for consideration). The N28 is in cut at this location. The boundary is a timber post and rail fence with green, plastic-coated mesh fencing. Roadside screen planting effectively hides the road from view. To the northeast of the housing portion, the site abuts residential development in the form of two- and three-storey terraced and semi-detached

housing, and 4 no. four-storey apartment blocks. Mature trees have been retained within this portion of the site and the entire attractively landscaped and finished. There are play areas constructed within the open space. To the south of the housing portion, the site abuts agricultural land – the boundary with which is undefined.

2.0 Proposed Development

2.1. A seven-year permission was sought on 22nd December 2016, for completion of residential development at Maryborough Ridge – to comprise 200 units (190 houses & 10 duplex units) and crèche, as follows-

- 30 no. two-bedroom units.
- 124 no. three-bedroom units.
- 46 no. four-bedroom units.
- Crèche of 96.4sq.m.
- Parking spaces for 407 cars.
- Proposed connection to 100mm diameter public watermains in Maryborough Ridge. Part of this run to be decommissioned.
- Proposed connection to public foul sewer.
- Surface water connection to public surface water sewer – to include 7 no. attenuation tanks.
- Realignment and upgrading of length of Maryborough Hill (L2470) between N28 fly-over and vicinity of new roundabout to the southeast – approximately 600 linear metres.
- Completion of partially constructed roundabout at estate entrance.

2.1.1. The application is accompanied by the following documentation of note-

- Planning & Design Statement – dated December 2016.
- Childcare Provision Assessment – dated December 2016.
- Construction Environmental Management Plan – dated December 2016.

- Letter of consent from Cork County Council, dated 20th December 2016, to the making of the planning application.
- Part V Costs Methodology – dated December 2016.
- Landscape Report from Cunnane Stratton Reynolds – undated.
- Public Lighting Report – dated 8th December 2016.
- Archaeological Assessment – dated December 2016.
- Engineering & Design Report – dated December 2016.
- Road Safety Audit – dated 8th December 2016 (and Feedback Form – dated 9th December 2016).
- Traffic & Transport Assessment – dated 21st December 2016.
- Environmental Impact Assessment Screening Statement – dated 2nd December 2016.
- Appropriate Assessment Screening Report – dated 21st December 2016.

2.2. Unsolicited additional information was received on 3rd February 2017, in the form of a Landscape & Visual Impact Assessment – to include photomontages (dated January 2017).

2.3. Following a detailed request for additional information, revised proposals were received on 8th June 2017, as follows-

- Revised site layout to reduce the number of residential units to 199.
- Relocation of crèche unit (20 children).
- Detailed cross-section drawings at site boundaries and open space areas.
- Revised site layout for unit 147.
- Revised layout to provide for 10m wayleave for sewers at northern end of site.
- Revised layout in vicinity of units 141 & 142 to facilitate sewer wayleaves.
- Traffic-calming measures.
- Phasing and completion for roundabout access.
- Reduction of Part V housing, from 20 to 19 units.

- 2.3.1. The submission was accompanied by an Acoustic Report – dated May 2017.
- 2.4. Following a request for clarification of additional information, revised proposals were received on 6th September 2017, as follows-
- Revised site layout to provide for 198 residential units.
 - Revision of open space at the centre of the scheme to provide for kick-about area of 1,380m²
 - Relocation of crèche.
 - Removal of one local play area and addition of one neighbourhood play area.
- 2.4.1. The response was accompanied by an Acoustic Report – dated July 2017.

3.0 Planning Authority Decision

By Order dated 3rd October 2017, Cork County Council issued a Notification of decision to grant planning permission subject to 27 conditions. As there is only a 1st Party appeal against a financial contribution, I do not propose to summarise the principal conditions – instead summarising just condition no. 6, to which the appeal relates-

6. Requires payment of a special development contribution of €252,000, for provision of Recreation, Open Space including Ballybrack Cycle Path – comprising specific exceptional costs.

4.0 Planning History

There is a substantial planning history attaching to this area – dating back to 2004. This is detailed in the Planning & Design Statement from McCutcheon Halley – submitted with the application to CCC on 22nd December 2016. Much of it relates to earlier phases of development at this site – competed and partially completed. Four applications- 06/13815, 08/8492, 08/10209 & 09/5371 relate to lands which form part of the current appeal site.

Ref. 09/5371: Relates to planning permission for housing in Phase 7, which has been extended by CCC – to expire on 29th November 2019. The original application for 57 houses was the subject of a 1st Party appeal to An Bord Pleanála (**PL**

04.234318), and which was granted permission on 30th November 2009. Work has recently commenced on this phase of development – using the half-completed roundabout on Maryborough Hill as access.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The relevant document is the Cork County Development Plan 2014. The site is located within the southern environs of Cork City. When the application was lodged, the site was located within the Carrigaline Electoral Area Local Area Plan 2011 (as amended). All but a small triangular-shaped area in the northwest corner and the road access were zoned for housing R-08 (for Medium A Density residential development). The remainder (triangular-shaped area and roadworks) was zoned 'Existing built up area'. 'Medium A Density' is defined as 20-50 units per hectare.
- 5.1.2. A new development plan for the area has been adopted – the Ballincollig/Carrigaline Municipal District Local Area Plan 2017. All but a small triangular portion of the site in the northwest corner and the Maryborough Hill road portion is now zoned SE-R-08, for residential use – as identified within the Cork City Southern Environs. The aforementioned triangular section (to the rear of An Radharc) and the Maryborough Hill road section is zoned 'Existing Built-up Area'. The SE-R-08 zoning, now extends to the south of the site along the N28 – an encroachment into what was the Metropolitan Greenbelt in the last Development Plan. The density is set at 'Medium A Density'.
- 5.1.3. The upgrade of the M28 is acknowledged with objective RY-U-02 – “M-28 Cork to Ringaskiddy Motorway Scheme. Finalisation of this route and development of the road will be subject to Environmental Impact Assessment and where necessary a Habitats Directive Assessment. Regard will be had in the design of the route to avoiding and mitigating impacts on sensitive environmental and heritage resources, as well as impacts on communities”.

5.2. **Cork County Council Recreation and Amenity Policy 2006 (as amended)**

This Policy requires a full range of recreational and amenity activities (including sports and arts/culture/facilities) for the population of Cork. There is reference to housing, for provision of sport and recreational infrastructure commensurate with the needs of the specific development. At least 30% of facilities are required to be provided on-site. At least 10% of a site is required for ordinary public open space.

5.3. **Natural Heritage Designations**

The site is neither within nor immediately abutting any European site. The closest such is the Cork Harbour SPA (Site code 004030) – located some 1.5km to the north-northeast of the housing portion of the site. The portion of the site which incorporates part of Maryborough Hill, is located approximately 1.3km from the SPA.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1. A 3rd Party appeal to An Bord Pleanála has been withdrawn, leaving only a 1st Party appeal, from McCutcheon Halley, agent on behalf of the applicant, George Maloney, received by An Bord Pleanála on 27th October 2017. The appeal was against conditions 2, 3, 5 & 6. This appeal flagged the notion that the applicant might wish to withdraw the part of the appeal relating to conditions 2, 3 & 5, in the event that no 3rd Party appeal was received by An Bord Pleanála. By letter received on 8th January 2018, McCutcheon Halley indicated to An Bord Pleanála that the appeal against conditions 2, 3, & 5 was being withdrawn – leaving only a section 48 appeal, against the special development contribution required by way of condition no. 6. As a result of this most recent partial withdrawal, it is intended only to summarise that portion of the appeal relating to condition no. 6. I note that the 1st Party appeal had already been divided into two sections – one part dealing with the special development contribution. This section of the appeal can be summarised in bullet point format as follows-

- The applicant is seeking the omission of condition 6.

- The special contribution for the provision of 'recreation, open space' is neither specific nor exceptional, and is not, therefore, in accordance with section 48(2)(c) and 48(12) of the Planning and Development Act, 2000 (as amended).
- The applicant has no problem with some commensurate contribution towards the provision of the Ballybrack Cycle Path. However, a special contribution towards a perceived shortfall in provision of on-site facilities is excessive and unjustified.
- There is only a loose reference to the Ballybrack Cycle Path, and an even more vague reference to unspecified 'Recreation and Open Space'. Such a speculative application of a special contribution runs contrary to section 48(2)(c). The planning authority must indicate what the specific exceptional costs are, which justify attaching such a condition. The costs must not have been envisaged when the Development Contribution Scheme was adopted.
- The planning authority must indicate that the costs are specific to the development, and would benefit the proposed development rather than the general area, and would not be incurred at all, if the proposed development did not proceed.
- The development provides for a connection to the Cycle Path at the northwestern boundary of the site, a walking route along the landscaped linear open space at the site's northwestern boundary, and the provision of a new cycle path along Maryborough Hill.
- The requirement to specify the works to be carried out is necessary to allow for the developer to reclaim moneys if the works are not commenced within five years, and completed within seven years of the date of payment.
- The planning authority has failed to provide a clear and transparent basis for the contribution, or the nature of the specific exceptional works to which it will be apportioned.
- The contribution should be omitted, or at least reduced, so that it relates only to the Ballybrack Cycle Path.

- The special development contribution is based on a perceived shortfall in recreation and amenity points (13 x €18,400 = €252,000) [sic].
- The proposed scheme, as revised by way of clarification of additional information submission of 6th September 2017, provided for the following-
 - Three local play areas @ 3 points each.
 - Two neighbourhood play areas @ 1 point each.
 - Large central kick-about area of 1,380m². 42 points are allowed for a full grass pitch of 7,980m², so 1,380m² as a fraction of 7,980m² would result in an entitlement of 7 points.
 - Provision for connection to cycle path at northwestern boundary @ 1 point.
 - Walking route along the landscaped linear open space @ 1 point.
 - Provision of a new cycle path along Maryborough Hill @ 3 points.
 - Total of 23 points – which is 70% of the total requirement.
- The general development contribution scheme contains an element for recreation and amenity. So the application of a Special Contribution amounts to double charging. This double charging is inconsistent with the Development Contributions Guidelines for Planning Authorities – issued by the Department of Environment, Community and Local Government in January 2013. “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 has already made a contribution. Double charging can also potentially arise where development contributions are supported by local area plans (LAP’s). This can occur because development which is located in the area which is the subject of an LAP, and levied under the LAP, can then be subject to a second development charge according to the full Development Plan. Planning authorities should ensure that the

necessary monitoring and control procedures are in place to prevent double charging”.

- The Board has previously determined that double charging in relation to recreation and amenities occurred in relation to residential appeal ref. PL 04.246853. There are other instances where the Board has decided that special contribution conditions must specify the nature, scope and details of the works on which the special contribution is based; where such works are not specified, the contribution condition should be omitted; works that do not relate to specific exceptional costs do not come within the scope of section 28(2)(c); a cash equivalent towards any shortfall in recreation and amenity points should be the exception rather than the rule.

6.1.2. The appeal is accompanied by the following documentation of note-

- Appendix 3 – setting out selected extracts from specified Board decisions in relation to special contributions.
- A3 site layout drawing submitted by way of clarification of additional information.

6.2. **Planning Authority Response**

There was no response from Cork County Council to the 1st Party grounds of appeal submitted.

6.3. **Observations**

There is one observation from Transport Infrastructure Ireland, received by An Bord Pleanála on 23rd November 2017, which can be summarised in bullet point format as follows-

- The development is at variance with official policy on control of development on or affecting national roads.
- Insufficient data has been presented to demonstrate that the development will not have a detrimental impact on the capacity, safety or operational efficiency of the national road network in the vicinity.

- The traffic and transportation assessment only considers the roundabout at the access to the housing site. No consideration is given to the heavily congested road network in the vicinity – particularly the N28 and N40. There are no proposals to mitigate these impacts through mobility management.
- Whilst the application acknowledges that there are proposals to upgrade the N28, it is not clear that any allowance has been made for this in the design submitted. It is not clear if appropriate mitigation has been provided for noise from the N28.

6.4. Further Responses

6.4.1. An Bord Pleanála issued as section 132 letter to Cork County Council, requesting specific comment in relation to the calculation of the amount of Condition 6, on or before 29th January 2018. The response, received on 25th January 2018, can be summarised in bullet point format as follows-

- Objective SC 5-2 of the County Development Plan 2014, states the need to provide quality open space, as per the Council's Recreational and Amenity Policy, amongst other things.
- The linking of the site with the Ballybrack Cycle/Pedestrian path will help improve the amenities of the area. It is hoped that the site can be linked to this path, either under or over the proposed new M28.
- The Policy allows for a cash equivalent, where deemed appropriate.
- The applicant is 14 points short of the required 33 points – and the county standard is €18,000 units per point.
- The Board is requested to dismiss the appeal.
- The spend for design and construction of Ballybrack Valley Shared Use and Cycle Path Phases 1, 2 & 3 is approximately €638,000. Design and construction of Phase 4 is estimated to cost €615,000. These works are considered to be a recreational/amenity development, and a key element of functional and sustainable transport. The amount of the levy in this instance represents approximately 20% of the overall cost of the scheme. The contribution equates to €1,272 per residential unit. A school and potentially

600 houses could be constructed on lands zoned R-06 that are running parallel to Phase 4. It is considered reasonable that the applicant be levied 20% of the overall costs.

6.4.2. The response of Cork County Council, received by An Bord Pleanála on 25th January 2018, was referred to the applicant for comment. The response of McCutcheon Halley, agent on behalf of the applicant, received by An Bord Pleanála on 27th February 2018, can be summarised in bullet point format as follows-

- Nowhere in the 2014 County Development Plan is the provision of a special development contribution charge, in lieu of public open space or recreation and amenity facilities, supported. Objective SC 5-4 of the Plan (Improvement of Recreation and Amenity Facilities) states that the Council will “seek opportunities to improve the quality and capacity of existing recreation and amenity facilities, through initiatives with both public and private sector (sports governing bodies, local community partnerships and private development proposals) and where appropriate the Council will use its powers under Section 48 of the Planning and Development Act 2000 to require development levies to achieve the enhancement of these facilities”. This does not equate to a blanket application of a special development contribution in lieu of public open space or recreation and amenity.
- The amount of facilities being provided on site is considerably in excess of the minimum 30% on-site requirement.
- The option of a monetary contribution is to be used only in exceptional circumstances. The Board has recently removed a similar condition – ref. PL 04.249194 – the decision on which was made after the original appeal had been lodged by this appellant.
- In relation to the cycle network in the area, the special development contribution was generated by a perceived shortfall in amenities on the site, not as a requirement to provide the Ballybrack Cycle Path. This piece of infrastructure was identified by CCC in an attempt to justify the imposition of the special development contribution. The provision of this amenity is neither exceptional nor specific to the proposed development at Maryborough Ridge. This is entirely contrary to the provisions of section 48(2)(c).

- The development of the cycle path was first mooted in 2013. There is no provision made to connect the cycle path to Maryborough Ridge. The appropriate way to fund this cycle path is through the general development contribution scheme.
- In relation to special development contributions – the Development Contribution Guidelines issued to PAs in 2013, state- “A special development contribution may be imposed under section 48(2)(c) where specific exceptional costs, which are not covered by the general contribution scheme, are incurred by a local authority in the provision of public infrastructure or facilities which benefit very specific requirements for the proposed development, such as a new road junction or the relocation of piped services. The particular works should be specified in the condition. Only development that will benefit from the public infrastructure or facility in question should be liable to pay the development contribution”.
- The PA has not justified the imposition of the special development contribution.

7.0 Assessment

7.1. Section 48 of the Planning & Development Act, 2000 (as amended)

7.1.1. Section 48(13)(a) of the Act states-

“Notwithstanding *sections 37 and 139*, where an appeal received by the Board after the commencement of this section relates solely to a condition dealing with a special contribution, and no appeal is brought by any other person under *section 37* of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance, but shall determine only the matters under appeal”. Therefore, the Board is precluded from consideration of this appeal *de novo*, and is restricted to consideration of condition 6 only.

7.1.2. Section 48(1)(c) of the Act states-

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.

7.1.3. Section 48(12) of the Act states-

Where payment of a special contribution is required in accordance with *subsection (2) (c)*, the following provisions shall apply-

- (a) the condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates,

7.2. **Condition 6**

Condition 6 states as follows-

At least one month before commencing development or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in writing, the developer shall pay a special contribution of €252,000.00 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 Recreation, Open Space including the Ballybrack Cycle Path. The payment of the 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 not 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 subparagraphs (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 unexpended 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.

7.3. **Cork County Council Development Contribution Scheme**

- 7.3.1. The Development Contribution Scheme for the county was adopted on 23rd February 2004. It is stated to be a twenty-year document. Rates are regularly updated – the latest on the website of CCC being from 1st January 2015 onwards. The Scheme does not give a breakdown of expenditure – even for headline items, and indeed, even if it did, they would be well out of date by 2018. The Scheme states- “The Annual Report of Cork County Council shall indicate the monies paid to and owed to the Council as outlined in Section 48 (14) (b) and how this money was spent”. There is no reference to cost breakdown under the given broad sub-headings of water, sewerage, roads and amenity. The Scheme provides for reduced contributions in certain circumstances. In relation to Special Contributions, reference is made to specific exceptional costs not covered by the Development Contribution Scheme. Where no list of what is covered by the Development Contribution Scheme is included within the Scheme, it is not possible for developers to know whether an item is or is not included. Appendix 1, which does not form part of the Scheme, and is stated to be for reference purposes only, sets out some particular types of development where special contributions shall be levied – referring specifically to

quarries/gravel pits, windfarms, golf courses and other leisure facilities which incorporate premises, and car-parking deficits. There is no reference to residential schemes.

- 7.3.2. The Scheme contains a Supplementary Development Contribution Scheme for the Cobh/Midleton – Blarney Suburban Rail Project. There is no other supplementary scheme in place within the county, even though it is open to the Council to adopt such: for amenity and recreation shortfalls within residential schemes, for instance.
- 7.3.3. Having regard to the Development Contribution Scheme, and the response of CCC to the Section 132 notice issued by the An Bord Pleanála, I would consider that the Development Contribution Scheme does not provide any detailed analysis of what has been provided by way of recreational and amenity facilities, and neither does it indicate what recreational and amenity facilities are included within the calculations of the amounts required to provide such facilities in the future. The applicant has argued cogently that the general development contribution scheme contains an element for recreation and amenity, and that the application of a Special Contribution amounts to double charging. This double charging is inconsistent with the Development Contributions Guidelines for Planning Authorities – issued by the Department of Environment, Community and Local Government in January 2013, wherein it states- “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”. In the absence of any detailed justification and costings for additional recreational and amenity facilities necessary to accommodate the needs of future residents of this development, I would consider that the application of a special development contribution would constitute double charging for such facilities – where the Development Contribution Scheme in place already contains an element for the provision of amenity facilities. Condition 27 of the Notification of decision to grant planning permission requires payment of a development contribution of €372,229.89. The applicant has not appealed this condition to An Bord Pleanála. This amount contains an element for the provision of amenity and recreational facilities – quite apart from the open space, cycle paths and recreational facilities to be provided within the site boundary.

7.4. Amenity & Recreation

7.4.1. The CCC Recreation and Amenity Policy, 2006 (as amended), sets out requirements for residential development on a points basis. In relation to this application, it is calculated that 33 points would be required. The tabulation of facilities provided, points attributed, and whether acceptable or not, is set down in the Planner's Report – dated 17th February 2017, as follows-

- Four local play areas @ 3 points each = 12 points.
- One neighbourhood play area @ 1 point = 1 point (unacceptable).
- One informal kick-about area @ 1 point = 1 point (unacceptable).
- One connection to cycle path @ 1 point = 1 point.
- One walking route @ 1 point = 1 point (unacceptable).
- One cycle path at Maryborough Hill @ 3 points = 3 points.

By these calculations, 16 points were proposed within the site. The layout of the scheme was amended by way of additional information and clarification of additional information submissions – the latest layout being that of 6th September 2017.

7.4.2. Policy Statement 6 reads- "The Council will continue to use it's powers under Section 48 of the Local Government Planning and Development Act 2000 to impose development charges for Recreation and Amenity purposes. It is intended that the spending of funds raised in this way will be used to achieve both the enhancement of existing facilities and for the provision of new facilities as appropriate. Under Section 109 of the Local Government Act, 2001 the Council may also use it's powers to set up a community fund".

7.4.3. Policy Statement 7 reads- "Developers of new housing developments will be required to make provision for sport and recreational infrastructure commensurate with the needs of the development, as an integral element of their proposal. Such provision shall include direct provision of facilities on or off site, or, in exceptional circumstances, a financial contribution in lieu of provision shall be made to the Council to enable it to make appropriate alternative provision. The minimum standards for the provision of leisure facilities as part of new housing developments are detailed in Appendix A below".

- 7.4.4. Policy Objective 6 (a) states- “Residential developments shall be levied in accordance with the Development Contribution Scheme adopted by the Council”.
- 7.4.5. Policy Objective 7 (1) states- “The standards for provision of recreation and amenity facilities as part of new housing developments are listed below in Appendix A. It is the Council’s objective to maximise the use of resources. If there are existing facilities nearby which could be improved then this option will be considered. It is also intended that the characteristics of a development such as site size, relationship to existing development, physical features such as barriers to access be taken into account. It is intended that the standards will be flexibly applied in an effort to maximise the delivery of facilities to the community”.
- 7.4.6. Appendix A – “Provision of Facilities as part of new housing developments” – states as follows-

Usable Open Space:

Usable open space shall be of the order of 12% - 18% of the site area. The percentage shall increase as the density of the development increases.

Location within the site:

In all cases the area of open space shall be reduced and recreational facilities, as detailed below, shall provided [sic] in it’s place. So far as is practicable, these facilities shall be distributed throughout the development and shall be operational before the adjacent housing becomes occupied.

Provision of Recreation Facilities:

1. Recreation facilities shall be provided as part of the housing development, as detailed below, at a rate of 1 point per 6 housing units.
2. A minimum of 30% of the required points shall be satisfied by the provision of on-site local facilities.
3. The remainder of the points requirement shall be satisfied by the provision of facilities, as detailed below, on-site, or off-site at an appropriate agreed location.
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 [sic] on the provision of recreation facilities to serve the development from which the cash equivalent is raised.

5. Alternative facilities other than those outlined below, or of a [sic] another nature, i.e. minority sports, arts/culture, can be considered for substitution for those items listed. In these circumstances the facilities to be provided shall be equivalent in recreational and/ or arts or culture value to the item being replaced. The acceptability or otherwise of substitute facilities shall be at the discretion of the Planning Authority and shall be decided as part of the Planning Application process. The Council recognises that the provision of a recreational trail can be considered as a recreational and amenity development.

Appendix A concludes with a 'Points Value Table' as follows-

- Neighbourhood Play Area = 1 Point.
- Local Play Area = 3 Points.
- District Play Area = 6 Points.
- Multi-use Games Area = 6 Points.
- Double Tennis Court = 7 Points.
- Grassed Pitch = 42 Points.
- Dressing Rooms = 6 Points.
- Community – 2 badminton = 23 Points.
- Community – 1 basketball = 58 Points.

- 7.4.7. As can be seen from Appendix A, 198 residential units with one point required for each six units – produces a requirement for 33 points for a development of this scale. Appendix A lists a number of larger ticket items ranging from small neighbourhood play areas to indoor basketball courts. The list is not exhaustive, and reference is made to alternative facilities such as a recreational trail. Clearly CCC adopted a more flexible approach, in that it considered connections to and

construction of cycle paths, amenity walkways and kick-about areas within the scheme – and allocated points accordingly. This would seem to be reasonable. The Policy is, and needs be, a flexible one – depending on the size and location of each site and what amenity facilities exist on nearby lands. The applicant has argued that, as a Grassed Pitch attracts an allocation of 42 points (and calculating that a grassed pitch measures 7,980m²), a proportionate allowance of 7 points should be made for 1,380m² of kick-about space within the proposed scheme. The basis or authority for the area of a pitch at 7,980m² is not given. I would note that a pitch is an area which would be marked, provided with goal posts, and perhaps drainage, and managed so as to be in a usable condition for as many months of the year as possible. A kick-about area is quite a different creature, and would likely require no more than that grass be cut on a reasonably regular basis – with no reference to further layout or management. I would not see that it could be awarded points on a proportionate basis by reference to a pitch. It is, however, a recreational amenity for residents, and should be awarded some points – somewhere below a Multi-use Games Area, which attracts six points. I would be satisfied that four points would be appropriate for a kick-about area of this size. The walkway along the western boundary of the site will become less attractive in future years if the residentially zoned lands to the south are developed – necessitating the construction of an access road along a considerable length of the northwestern boundary with the N28.

7.4.8. Based on Appendix A, the points allocated by CCC for items which do not appear within the appendix, and an allowance for the kick-about area, I calculate the point score for this development as follows-

- Three local play areas @ 3 points each = 9 points.
- Two local play areas @ 1 point each = 2 points.
- One kick-about area = 4 points.
- One connection to cycle path at northwestern boundary = 1 point.
- One walking route along western boundary of site = 1 point.
- Provision of new cycling route along Maryborough Hill = 3 points.

This comes to a total of 20 points provided on-site – leaving a shortfall of 13 points. At the rate of €18,000 per point – this would result in a requirement for a special

contribution of €234,000. The Recreation and Amenity Policy clearly allows for payment of a cash equivalent, where facilities are not being provided on-site, but may be provided on adjacent lands or nearby, and lists the Ballybrack Valley Shared Use Pedestrian and Cycle Path as one such scheme which could be financially supported by the proposed housing development. The applicant originally indicated a willingness to contribute towards this cycle path (by way of 1st Party appeal), without specifying to what extent: but appears to resile from this position by way of 1st Party response to the 2nd Party response – arguing that the development does not benefit in any way from the Ballybrack cycle path.

7.4.9. The calculation by CCC that 19 points would be provided on-site – left a shortfall of 14 points. This shortfall was levied at the rate of €18,000 per point – resulting in the required special contribution of €252,000. I would be concerned that compliance with planning policy is not an appropriate application of section 48(2)(c) of the Planning and Development Act, 2000 (as amended). There has been no demonstration of specific exceptional costs which are of specific benefit to the proposed development. Nor has there been any attempt to justify apportioning some of the costs of the Ballybrack Valley Shared Use Pedestrian and Cycle Path to the proposed development.

7.4.10. Ballybrack Valley Shared Use Pedestrian and Cycle Path is a short cycle trail linking Douglas village with Bracken Court housing estate in Donnybrook – via Ballybrack (roughly along the valley of the Mangala River/Ballybrack Stream). This cycle path largely serves to connect existing residential development and some scattered open spaces/riparian woodland with Douglas village – removing such traffic from the road network at Donnybrook Hill/Scairt Hill. It is indicated as being part of a wider proposed Cycle Network Plan for Metropolitan Cork. Work on the cycle path is nearing completion, with some sections already open to users. I calculate the distance between the partially-constructed roundabout on Maryborough Hill to the start of the cycle path in Douglas village, to be approximately 2.6km. This distance would be slightly reduced if a cycle path link is provided from the northwest corner of the site, through ‘The Close’, to a tie-in at Edgewood beside the Maryborough Hill N28 grade-separated junction. I would also note the elevational difference – the appeal site being on or about the 110m contour, whilst Douglas village is on or about the 10m contour. There are already some stretches of cycle path on Maryborough

Hill at the Douglas village end. The Ballybrack cycle path is, in isolation, likely to be of very little amenity use to the future residents of Maryborough Hill. However, if it forms part of a wider network for Metropolitan Cork, then it might serve an amenity function, notwithstanding the elevational differences involved. If a more direct route were to be provided, via the grade-separated junction on the N28 at Carr's Hill, the distance from the site to the cycle path, via the R855, would be somewhat shorter – but the height difference would remain something of an obstacle to use. I note that the Planner's Reports refer to possible future connectivity upon completion of the M28 motorway scheme. This scheme is currently before An Bord Pleanála for consideration – and there is no indication if and when it might go ahead/be completed.

8.0 Recommendation

I recommend that Condition 6 of the Notification of decision to grant planning permission should be omitted, for the Reasons and Considerations set out below.

9.0 Reasons and Considerations

It is considered that the planning authority has not demonstrated that there are specific exceptional costs in terms of the provision of recreation and amenity facilities arising from the proposed development, that would benefit the proposed development in this instance. The Board considered that compliance with policy is not an appropriate application of section 48(2)(c) of the Planning and Development Act, 2000 (as amended), and that costs to be levied under this section should be specific exceptional costs which are of specific benefit to the proposed development, and that these costs should be properly apportioned. The contention that the Ballybrack Valley Shared Use Pedestrian and Cycle Path will be of benefit to the proposed development is not borne out by evidence submitted by the planning authority – with particular regard to the location of this pedestrian and cycle path relative to the appeal site at Maryborough Ridge and the timing of its construction. It is, therefore, considered that the special contribution, as proposed by the planning authority, for recreation and amenity facilities, does not come within the scope of

section 48(2)(c) of the Planning and Development Act, 2000 (as amended), and accordingly, would be unwarranted.

**Michael Dillon,
Planning Inspectorate.**

14th March 2018.