



An  
Bord  
Pleanála

## Inspector's Report ABP-300979-18

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<b>Development</b>	Retention of ground floor and first floor as religious assembly rooms and external signage and proposed additional signage
<b>Location</b>	5 Union Quay, Cork
<b>Planning Authority</b>	Cork City Council
<b>Planning Authority Reg. Ref.</b>	17/37447
<b>Applicant(s)</b>	The Cork Full Gospel Fellowship
<b>Type of Application</b>	Retention and Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	The Cork Full Gospel Fellowship
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	16 <sup>th</sup> May, 2018
<b>Inspector</b>	Kevin Moore

## 1.0 Site Location and Description

- 1.1. The site of the proposed development is located on Union Quay in Cork City Centre close to the junction with Anglesea Street, Terence MacSwiney Quay and Parnell Bridge. No. 5 consists of a two storey building in use for religious assembly. There is a mix of commercial uses in the immediate vicinity.

## 2.0 Proposed Development

- 2.1. The proposed development would comprise the retention of the ground and first floors of No. 5 Union Quay as religious assembly rooms and existing external signage and permission for additional signage. The stated floor area of the development is 617.27 square metres on a 0.037 hectare site.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.2. On 24<sup>th</sup> January 2018, Cork City Council decided to grant permission for the proposed development subject to 7 conditions. Condition Nos. 6 and 7 attached to the decision to grant planning permission are as follows:

6. Within 6 months of the grant of this permission, 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”):

Class 1 - Roads, Transportation Infrastructure and Facilities

Class 2 - Water and Drainage Infrastructure 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 13<sup>th</sup> November, 2017 is €32398.96, 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 13<sup>th</sup> November, 2017, and in the interests of the proper planning and sustainable development of the area.

7. Within 6 months of the grant of this permission, 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 13<sup>th</sup> November, 2017 ('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 €12261.51....., 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.

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 2017-2021, which was adopted by Cork City Council on 13<sup>th</sup>

November, 2017 and in the interests of the proper planning and sustainable development of the area.

### **3.3. Planning Authority Reports**

#### **3.3.1. Planning Reports**

The Area Planner noted development plan policy and reports received. The proposed use and existing external sign were considered acceptable. The proposed additional sign was considered excessive and it was recommended that it would not be permitted. In relation to development contributions, it was stated that no allowance or reductions are applicable to retention permissions. A grant of permission subject to conditions was recommended.

The Senior Executive Planner concurred with the Area Planner's recommendation.

#### **3.3.2. Other Technical Reports**

The Drainage Engineer had no objection to the proposal subject to one condition.

The Roads Design Technician recommended that permission be granted subject to conditions, inclusive of a General Development Contribution and a Supplementary Contribution.

### **3.4. Prescribed Bodies**

Irish Water had no objection to the proposed development.

The Health and Safety Authority stated that it did not advise against the granting of planning permission.

## **4.0 Planning History**

I have no record of any previous planning application or appeal relating to this site.

## 5.0 Policy Context

### 5.1. Cork City Development Plan 2015-2021

#### Zoning

The site is zoned 'City Centre Commercial Core Area' with the objective "To support the retention and expansion of a wide range of commercial, cultural, leisure and residential uses in the commercial core area (apart from comparison retails uses)."

#### Places of Worship

The following is required to be taken into consideration when determining proposals for places of worship including changes of use:

- To facilitate public worship activities at appropriate locations within the city;
- Proposals must be considered to complement the activities and use of adjoining developments;
- Proposals should not have a detrimental impact on the amenity of the area;
- Proposals will be assessed in the context of the location of the site, ease of access to transport links, and services and utility connections and the existing and/or desired level of amenity in the area.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The first party appeal is against the development contributions required by Conditions 6 and 7 attached with the decision of the planning authority. The grounds of the appeal may be synthesised as follows:

- The applicant was misled in thinking that development charges in their circumstances would no longer be applicable under pending new legislation and were advised to seek a six-month extension to the planning period in order to accommodate this. The applicant was, thus, alarmed to receive the decision with combined development charges amounting to €44,660.07.

- The applicant is a registered charity and its only source of income is through voluntary contributions. The Fellowship has operated in the central city area for 25 years and is not imposing an additional burden on services. It has contributed immensely to the wellbeing of the impoverished in the city over this period. The Fellowship does not possess funds of the nature requested.
- It is unwarranted that a charitable organisation should be penalised in this way and it is requested that it be relieved of the requirement to comply with Conditions 6 and 7.

The appeal includes a letter to Cork City Council and a letter from Pastor Tony Simpson setting out the background and recent history of the Fellowship.

## 6.2. **Planning Authority Response**

The planning authority stated that it had no option but to apply the charge because the proposal related to retention. A draft revised contribution scheme is currently on public display and under the terms of that scheme the application would be exempt from paying contributions. The Board is asked to delay consideration of the case until September in order to allow consideration of the final revised scheme as it may have a material impact on the outcome of the case.

## 6.3 **Further Submission**

- 6.3.1 In response to the planning authority's submission, the appellant asked the Board to delay consideration of the appeal until October 2018.

## 7.0 **Assessment**

- 7.1. The appeal relates solely to the proper application by the planning authority of the terms of its development contribution scheme and supplementary development contribution scheme adopted under sections 48 and 49 of the Planning and Development Act. It is considered appropriate that the Board determines the appeal in relation to the disputed conditions only (Conditions 6 and 7 of the planning authority's decision) which relate to the financial contribution of €32,398.96 being sought by the planning authority under the General Development Contribution

Scheme 2017-2021 and to the financial contribution of €12,261.51 being sought by the planning authority under the Supplementary Development Contribution Scheme 2017-2021. The provisions of section 48(10)(b) and (c) and (13)(b) apply in this instance.

7.2. I note the following from Cork City Council General Development Scheme 2017-2021:

**“Table 3: Development Contributions for residential and / or non-residential development per square metre floor area in Euro.**

<u>Class</u> € per square metre	<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>	<u>Total</u>
	€35.16	€0.92	€16.62	€52.70

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 ...

**1.6 Exemptions and Reductions**

The Council applies the following exemptions or percentage reductions in respect of the categories set out in Table 5 below (also subject to paragraphs 1.8 and 1.9):

**Table 5: % Reductions in respect of specified categories of development**

<b>Category</b>	<b>Description</b>	<b>Reduction</b>
<b>5.1</b>	Provision of facilities by organisations which are considered to be exempt from planning fees as outlined in Part 12, Article 157 of the Planning and	<b>100%</b>

Development Regulations 2001 as amended, except  
where specified below.\* ...

*\* “ Where a planning application consists of development designed or intended to be used for social, recreational, educational or religious purposes by the inhabitants of a locality, or by people of a particular group or religious purpose denomination, and is not to be used mainly for profit or gain,  
Is designed or intended to be used as a workshop, training facility, hostel or other accommodation for persons with disabilities and is not to be used mainly for profit or gain” ...*

### **1.7 Retention Permissions**

In the case of retention permissions, no allowance/reductions shall apply.”

7.3. I note the following from the Cork City Council Supplementary Development Scheme 2017-2021:

#### **“2.3 Project**

The project consists of works and the provision of rolling stock associated with:

- 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.

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.

#### **2.4 Area of Supplementary Development Contribution Scheme**

The scheme applies to areas which are:

- Within a 1 kilometre corridor of the Cork-Blarney, Cork-Cobh and Cork-Midleton railway lines (excluding tunnel section), (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).

## 2.6 Level of Contribution

In accordance with the Act, Cork City Council (“the Council”) will determine and levy the contributions set out in Table 2\* as a condition of planning on all Development except where an Exemption or Reduction (outlined in Table 4) is applied.

**Table 2: Level of Contributions Payable:**

<b>Development Type</b>	<b>Unit</b>	<b>Rate €</b>
Office and other non residential	Square metre	19.94
Development (excl. retail) within 1km of the rail line/station		

## 2.8 Exemptions and Reductions

The Council applies the following exemptions or percentage reductions in respect of the categories set out in Table 4 below (also subject to paragraph 2.9 and paragraph 2.10):

**Table 4: % Reductions in respect of specified categories of development**

Categories	Reduction
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### 4.1

Provision of facilities by organisations which are considered to be exempt from planning fees as outlined in Part 12, Article 157 of the Planning and Development Regulations 2001 as amended, except where specified below.\*

100%

... \* “ *Where a planning application consists of development designed or intended to be used for social, recreational, educational or religious purposes by the inhabitants*

*of a locality, or by people of a particular group or religious purpose denomination, and is not to be used mainly for profit or gain, Is designed or intended to be used as a workshop, training facility, hostel or other accommodation for persons with disabilities and is not to be used mainly for profit or gain” ...*

## **2.9 Retention Permissions**

In the case of retention permissions, no allowance/reductions shall apply.”

7.4. I note that Cork Full Gospel Fellowship is a registered charity - Charity No. 20015039. The planning application in this instance comprises development which is development proposed to be carried out by a voluntary organisation which is designed to be used for social, recreational, educational or religious purposes by the inhabitants of the locality and by people of a particular religious denomination and is a development that is not to be used mainly for profit or gain. It is, therefore, apparent that the proposed development is compliant with the provisions of Article 157(1)(a) of the Planning and Development Regulations, 2001. Thus, under Cork City Council’s Development Contribution Schemes, a proposed development of this nature seeking planning permission would generally be able to avail of the 100% reduction of general and supplementary development contributions that would otherwise be required to be paid.

7.5. Section 48(10)(b) of the Planning and Development Act states:

“An appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme (i.e. a development contribution scheme) have not been properly applied in respect of any condition laid down by the planning authority.”

Section 49(3A) of the Act states:

“Notwithstanding subsection (3) and section 48(10), the Board shall consider an appeal brought to it by an applicant for permission under section 34, in relation to a condition requiring the payment of a contribution in respect of a public infrastructure service or project specified in a supplementary development contribution scheme,

where the applicant considers that the service or project will not benefit the development to which the permission relates and section 48(13) shall apply to such an appeal.”

Having regard to the above, it is apparent that, in the case of Condition 6 of the planning authority’s decision, the Board is required to consider whether the terms of Cork City Council’s General Development Contribution Scheme have or have not been properly applied, while in the case of Condition 7, the Board is required to consider whether the project the subject of the Supplement Development Contribution Scheme will or will not benefit the development the subject of the planning application.

7.6 Taking the current 2017-2021 General Development Contribution Scheme first, the calculation of a required development contribution would be based on a rate of €35.16 per square metre of gross floor area applicable to the change of use for roads, transportation infrastructure and facilities, €0.92 per square metre for stormwater management infrastructure and facilities, and 16.62 per square metre for parks, recreation, amenity and community facilities. This provides a total development contribution at a rate of €52.70 per square metre of gross floor area. The planning application details state that the gross floor area applicable to the change of use is 617.27 square metres. Thus, the development contribution applicable to such an area would be €32,530.13 (i.e.  $617.27 \times €52.70$ ). I note that the planning authority’s development contribution schemes are subject to indexation and are updated on a quarterly basis. I anticipate that this explains the differences in final calculated figures by the planning authority’s Roads Design Engineer and the Planner and now my calculation set out above.

7.7 Notwithstanding the applicant comprising a voluntary organisation and a registered charity, I note that the City Council’s general development contribution scheme expressly provides for no allowances or reductions in the case of retention permissions. The planning application was clearly for permission to retain the change of use to religious assembly rooms. The Board are limited to considering whether the terms of the general development contribution scheme have, or have not, been applied properly. The scheme does not permit allowances/reductions in

this instance and the planning authority was applying the terms of its scheme as set out therein. Being limited to these considerations, the Board can only reasonably determine that Condition 6 should be attached with the permission.

7.8 Moving to Condition 7, I again note that the planning authority's Supplementary Development Scheme expressly provides for no allowances or reductions in the case of retention permissions. The Board's considerations are limited to whether the project the subject of the Supplement Development Contribution Scheme will or will not benefit the development the subject of the planning application. The appellant has set out the nature of the activities of the voluntary charity in its submission to the Board. It is submitted that the Fellowship vacated rented premises at Carroll's Quay, that it has operated within the central city area for 25 years, and that it is not imposing an additional burden on services. It is apparent that the proposed development has resulted out of a necessity to relocate from other premises due to redevelopment of the applicant's previously leased premises. I do not consider that, in principle, it is fair or reasonable to determine that the applicant, a voluntary organisation that has been functioning in the city centre area for some 25 years, should be subject to a supplementary development contribution. In terms of the project the subject of the supplementary development contribution scheme, I do not see that the further enhancement and development of rail services will in any way have particular benefit for the applicant in this instance, whose functions include religious service, community service, and caring for those in need within the city community. I, thus, conclude that the project the subject of the Supplementary Development Contribution Scheme will not benefit the development the subject of the planning application and that Condition 7 should be omitted.

Note: The planning authority and the appellant has requested the Board to delay making a decision on the appeal until September/October 2018. There are statutory timelines to be met to ensure that the determination of appeals are made in a prompt and efficient manner. Having regard to the outcome arising from the planning authority's decision in this instance (where it is apparent that the applicant did not anticipate any likelihood of the requirement to pay any development contribution) and to the lack of any guarantee that a revised scheme will in fact be in place by September/October 2018 and that this same

revised scheme will in fact facilitate the appellant in this instance, it is my recommendation that the Board makes a decision based upon what is known at this time.

## 8.0 Recommendation

8.1 I recommend as follows:

Having regard to the nature of condition numbers 6 and 7 the subject of the appeal, the Board is satisfied 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 and directs the said Council to:

ATTACH Condition number 6 and the reason therefor, and

REMOVE Condition number 7 and the reasons therefor.

## 9.0 Reasons and Considerations

It is considered that:

- Having regard to the nature of the development, which is a development for retention that is subject to the provisions of Cork City Council General Development Contribution Scheme 2017-2021, it is considered that the terms of the development contribution scheme have been properly applied and that a general development contribution condition should be included in this instance.
- Having regard to the applicant comprising a long-established voluntary organisation that has been functioning in the city centre area and the proposed development resulting from relocation from an established premises within the city centre area to another city centre location, it is considered that the project the subject of Cork City Council's Supplementary Development

Contribution Scheme 2017-2021 will not provide any particular additional benefit to the development the subject of the planning application.

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Kevin Moore  
Senior Planning Inspector

14<sup>th</sup> June 2018