



An
Bord
Pleanála

Inspector's Report ABP-301370-18

Development The construction of a mixed use comprising 55 no residential apartments, 3 retail units, 4 no. office units, new vehicular access from old Ballymun road at east, communal open space in the form of two separate roof gardens accessed from first floor level, loading bay at northern boundary (for the proposed retail components). 72 no car parking spaces and 76 no cycle parking spaces.

Location Junction of Northwood Avenue and Old Ballymun Road,
Dublin 9

Planning Authority Fingal County Council

Planning Authority Reg. Ref. F17A/0704

Applicant(s) Techhus Ltd

Type of Application Permission

Planning Authority Decision GRANT

Type of Appeal First Party against special
development contribution condition

Appellant(s) Techhus Ltd.

Observer(s) None

Date of Site Inspection

NA

Inspector

John Desmond

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1.0 Site Location and Description

- 1.1. The site is situated in southern County Fingal, close to the northern boundary of Dublin City Council, adjacent the southwest of the junction between Old Ballymun Road and Northwood Avenue, c.30m east of Northwood Avenue's junction with the Ballymun Road (R108) and c.500m south of the Ballymun Road junction with the M50. This corner site has a stated area of 0.39ha.

2.0 Proposed Development

- 2.1. The construction of a mixed-use development comprising 55no residential apartments, 3 retail units, 4 no. office units, new vehicular access from old Ballymun road at east.

3.0 Planning Authority Decision

3.1. Decision

To **GRANT** permission subject to 30no. conditions including a special development contribution condition, no.27 requiring the payment of an unspecified sum, to be agreed, for the upgrading of the junction between the Old Ballymun Road and Northwood Avenue, which reads as follows:

'The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of the delivery of the upgrading of the junction of the Old Ballymun Road and Northwood Avenue. The amount of the contribution shall be agreed with the planning authority prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index Building and Construction (Capital Goods), Published by the Central Statistics Office.'

Reason: It is considered reasonable [sic] that the payment of a contribution.'

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The report of the Council's Planning Officer is consistent with the decision to grant permission (except that a condition requiring payment of security bond was omitted) and noted the recommendation of the Transportation Planning Section concerning the attachment of a special development contribution condition for the upgrading of the Old Ballymun Road and Northwood Avenue junction.

3.2.2. Other Technical Reports

Transport Planning Section (undated, but post receipt of further information) raised no objection subject to 6no. conditions, including the special development contribution condition (condition no.27) concerning the upgrade of the Old Ballymun and Northwood Avenue junction.

Parks Planning Section (06/03/18) no objection subject to conditions.

EHO (30/11/17) no objection subject to conditions.

Water Services Section (not dated) no objection subject to conditions.

3.3. **Prescribed Bodies**

Irish Water (30/11/17 & 28/02/18) no objection subject to conditions.

3.4. **Third Party Observations**

None received.

4.0 **Relevant Planning History**

Site adjacent to south

Reg.Ref.15A/0054 – Permission **GRANTED** by the planning authority for the development of 62no. housing units with access onto the Old Ballymun Road. No special development contribution attached.

5.0 Policy Context

5.1. Development Plan

Land use zoning objective: ME – Metro Economic Corridor. *Facilitate opportunities for high density mixed use employment generating activity and commercial development, and support the provision of an appropriate quantum of residential development within the Metro Economic Corridor.*

Specific objectives – Indicative cycle / pedestrian route (along Northwood Avenue adjacent north of site); GDA cycle network (along Ballymun Road to the west); indicative route for new metro north (along Ballymun Road to the west).

Objective SANTRY 5 - *Prepare and implement a Masterplan for lands identified at Northwood (see Map Sheet 11, MP 11.E) during the lifetime of this Plan. The main elements to be included are provided below. The list is not intended to be exhaustive.*

- *Facilitate provision of an underpass to include provision for a car, bus, cycle, and pedestrian link to link lands east and west of the R108 to enhance connectivity.*
- *Ensure where feasible, development overlooks the Santry River Walk.*
- *Allow the re-location of existing units to facilitate connectivity to the proposed Northwood Metro Stop.*
- *Enhance pedestrian links within and to Santry Demesne.*
- *Ensure the continued protection of trees within the subject lands.*
- *Facilitate provision of a direct access route from Old Ballymun Road through Northwood. Development shall enhance connectivity to the proposed Northwood Metro Stop.*

Objective ED98 – *Prepare Local Area Plans and Masterplans within the lifetime of the Development Plan for strategically important Metro Economic zoned lands in collaboration with key stakeholders, relevant agencies and sectoral representatives.*

5.2. **Development Contribution Scheme**

Fingal County Council Development Contribution Scheme 2016-2020

5.3. **Reference Documents**

Development Management Guidelines for Planning Authorities (DEHLG, 2007)

5.4. **Natural Heritage Designations**

South Dublin Bay and River Tolka Estuary SPA site code 004024 (5.3km to the southeast).

6.0 **The Appeal**

6.1. **Grounds of Appeal**

This is a first party appeal against the attaching of a special development contribution under s.48(2)(c) of the Planning and Development Act 2000, as amended.

The main grounds of the appeal may be summarised as follow:

- The condition is not warranted and is unreasonable.
- The condition does not provide any details, whatsoever, in respect of the condition.
- The basis of the calculation of the contribution, the scope of works, the expenditure involved, and the apportioning of cost are not explained as part of the decision as required under the Act.
- The internal reports and the decision do not detail or explain any '*specific exceptional costs*'.
- No information is obtainable on the upgrading of the subject junction, with no reference to same under the Plan and it is not included in Transport Projects under Appendix II of the DCS.

- No mention of intended junction upgrade was mentioned at pre-planning stage discussions with the Transport Planning Section.
- S.17 of the DCS requires any special contribution to explicitly reference the particular works to be carried out by the Local Authority in public infrastructure from which the development will benefit.
- S.7.12 of the Development Management Guidelines advises that it is essential that the basis for the calculation of the special development contribution be explained in the planning decision, identifying the nature / scope of works, the expenditure involved and the basis for the calculation and how it is to be apportioned to the particular development.
- A review of the Council's 'Section 48 Assessment of Financial Contributions and Bonds' shows that no such calculation has been undertaken.
- The principle of the condition is wholly inappropriate, but the requirement to pay an undisclosed sum presents significant financial uncertainty for the applicant and will adversely affect progressing this development.
- Contrary to s.7.3.3 of the Development Management Guidelines which require conditions to be precise, clear and '*to tell the developer from the outset exactly what he or she has to do, or must not do*'.

Technical Notes Report prepared by Transport Insights informing the first party appeal, the main points of which may be summarised as follow:

Local Authority Policy

- Based on a review of local authority policies, the findings of analysis of the proposed development's traffic impacts and FCC's Transport Planning Section's Report on the application, the attachment of condition no.27 lacks justification and may undermine local authority policies relating to sustainable development in the local area.
- Northwood Avenue is identified as an '*indicative cycle / pedestrian route*' in the CDP and Objective Santry 5 is to '*facilitate provision of a direct access route from Old Ballymun Road through Northwood. Development shall enhance connectivity to the proposed Northwood Metro Stop.*'

- There are no specific proposals to upgrade the Old Ballymun Road / Northwood Avenue junction and any enhancements to Northwood Avenue and junctions there-along relate to local permeability measures to complement delivery of Metrolink by improving sustainable transport infrastructure within its walking / cycling catchment.
- Condition no.27 is not consistent with local policy.

Traffic Impacts

- The Traffic Statement submitted with the applicant determined (in its analysis set out in s.3) that the impact of the development (s.6.5) on Old Ballymun Road / Northwood Avenue would be a 2.4% increase in daily traffic movements through the junction in opening design year 2019.
- 2.4% is substantially less than the threshold values under the Traffic and Transport Assessment Guidelines (NRA, 2014) that would necessitate more detailed analysis including traffic modelling and potentially the requirement for mitigation of the development's traffic impacts.
- The existing junction is understood to operate in a satisfactory manner with no significant peak period queuing on the local network related to its existing layout or signal controls.
- Condition no.27 is unwarranted on the basis of the very small increases in traffic arising from the development proposal.

FCC's Transport Planning Section Report

- While no adverse performance issues are referred to it indicated that the subject junction would need to be upgraded as part of the development of the site and adjoining zoned lands.
- The subject junction operates in a satisfactory manner and it is not apparent that the capacity of the junction will be insufficient to accommodate potential increase in traffic from the development and from the development of adjoining zoned lands.
- The recommendation that a special development contribution be attached for the upgrading of the junction appears unsupported by any evidence of a need

for such a scheme and the enhancement of vehicular capacity through the junction may be incompatible with the proposed indicative cycle / pedestrian route and enhance pedestrian / cyclist permeability to the planned Metrolink scheme.

- Condition no.27 is unsupported by evidence from FCC demonstrating a need for an upgrade of the junction in the context of the development of adjoining zoned lands.

6.2. Planning Authority Response

The main points of the response (received 28/05/18) may be summarised as follow:

- The signalised junction of Old Ballymun Road / Northwood Avenue currently operates at capacity during peak hours and *any* increase in approach flows, such as will arise from the proposed development, will have a highly disproportionate impact on queuing and delays at the junction.
- In conjunction with potential developments in the immediate vicinity, the impact on the junction operation will lead to an unacceptable increase in queuing and delay, but this can be mitigated through significantly improved junction capacity through change from current vehicular activated traffic signals to the DCC's SCATS system which operates at the adjacent junction to the R108 (Ballymun Road), as do the other junctions in the area. Having the two junctions on the same system would enable the optimal arrangement for the movement of traffic.
- Implementation of SCATS would require upgrade to DCC requirements, including bringing CCTV and traffic ducting from the DCC network from the R108 to the site.
- S.17 of Fingal County Council's DCS 2016-2020 provides that a special development contribution may be imposed where exceptional costs not covered by the DCS are incurred by the Council in the provision of a specific infrastructure or facility, to be specified in the planning condition. This is a specific exceptional cost not covered by the DCS but will benefit the proposed development.

- The costs of the junction improvements have been estimated at €258,064, inclusive of 10% contingency and VAT at 13.5%.
- It is concluded, from a survey of existing zoned lands in the vicinity, that four sites, including the appeal site, totalling 3.1ha, would impact on a benefit from the junction upgrade, and costs should be apportioned based on site area as a percentage of total costing.
- The site is 0.4ha, or 12.9% of the 3.1ha total area concerned, and the apportioning of costs is therefore €33,290.26.
- An Bord Pleanála is requested to uphold condition no.27.

7.0 Assessment

The issues arising under this appeal may be addressed under the following headings:

- 7.1 Principle
- 7.2 Need for junction upgrade
- 7.3 Total costs and allowable deductions
- 7.4 Apportioning of costs

7.1. Principle

- 7.1.1. This is a first-party appeal against the attachment of a Special Development Contribution under Section 48(2)(c) of the Planning and Development Act, 2000, as amended. No other appeal has been brought by any other person under Section 37 of the decision of the Planning Authority. Under Section 48(13)(a) the Board may only determine the matters under the appeal and I will therefore limit my assessment to consideration of the relevant condition.
- 7.1.2. Condition no.27 requires the payment of a special development contribution, prior to commencement of development or in such phased payments as the planning authority may facilitate, *'in respect of the delivery of the upgrading of the junction of the Old Ballymun Road and Northwood Avenue'*. The sum of the contribution is not

specified in the condition but is to be agreed prior to the commencement of development.

7.1.3. Section 48(2)(c) of the Act provides that a planning authority may, in addition to the terms of a development contribution scheme, require the payment of a special contribution in respect of a particular development where specific exceptional cost not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development. I am satisfied that the upgrading of the subject junction constitutes public infrastructure. The Planning Authority submits that the proposed junction upgrade is a specific exceptional cost not covered by the Fingal County Development Contribution Scheme 2016-2020. In this regard I note that the subject junction upgrade is not a project listed in Appendix II of the DCS and therefore the cost of implementation of same is a specific exceptional cost not included in the DCS.

7.1.4. The planning authority submits that the proposed development will benefit from the junction upgrade. The appellant does not dispute that the permitted development would benefit from the proposed upgrade. I am satisfied that the permitted development, which will access the wider road network via the proposed upgraded junction between Northwood Avenue and Old Ballymun Road, will benefit from the proposed junction upgrade. The principle of attaching a special development contribution is therefore considered to be acceptable.

7.2. **Need for junction upgrade**

7.2.1. The appellant submits that the existing subject junction is understood to operate in a satisfactory manner with no significant peak queuing on the local network related to its existing layout or signal controls. The appellant's transport consultants note the Council's Transport Planning Section's report did not refer to any adverse performance issues at the junction and the consultants consider the junction to operate in a satisfactory manner. It is not apparent to the consultants that the capacity of the junction will be insufficient to accommodate potential increase in traffic from the development and from the development of adjoining zoned lands and the need for the upgrade has not been supported by any evidence from the Council.

7.2.2. The detail of the subject junction upgrade and the need for same is lacking in the

report of the Council's Transportation Planning Section's report and the planner's report, however this has been rectified in the planning authority's response to the appeal. The planning authority confirms that the existing junction currently operates at capacity during peak hours, although it has provided no evidence of same. The Traffic Statement submitted with the application includes the results of a 12-hour baseline traffic survey which indicates significant east-west traffic movements, in particular, through the junction. Neither the applicant nor the planning authority determined the notional capacity of the existing signalised junction, or its current operating capacity.

7.2.3. On balance, I consider it reasonable to accept that the existing vehicle-activated traffic signals operate at capacity at peak traffic periods and that there is a need to upgrade the junction to operate on the SCATS system to facilitate the development of the application site in addition to the potential development of extensive zoned lands in the vicinity.

7.2.4. I do not agree with the appellant that the proposed upgrade is inconsistent with Council policy, with specific reference to policies relating to sustainable development and sustainable transport links (including along Northwood Avenue) and to the absence of a specific policy to upgrade the junction under the Development Plan. An appropriately upgraded signalised junction may be designed to improve capacity for active transport modes in addition to motorised transport. And were the subject junction upgrade to be included as an objective in the Development Plan it would have to be taken into account in the DCS, in which case it would not be a specific exceptional cost.

7.3. **Total Costs and allowable deductions**

7.3.1. In response to the appeal the planning authority has provided a detailed costing for the proposed upgrade of the subject junction and the basis for apportioning of costs between different developments. The total of the junction upgrade is stated at €258,064 on the basis of:

- Design €8,165.
- Crossings €28,860 - 6no. at €4,810 apiece;
- Civil works €74,450 - 15no. chambers at €1,100 apiece and 253m ducting at

€150/m (total €54,450); plus footpath reinstatement, tactile paving, bollards and road markings (€20,000);

- M&E €95,224.64 (signal head, poles, chamber covers and frames, loops, CCTV, PBUs, detection, cabling, controllers, prom, installation costs, etc.)
- Subtotal €206700 + €20,670 (10% contingency = €227,370).
- Total €227,370 + €30,694.90 (13.5% VAT) = €258,064.

7.3.2. The planning authority's submission has been circulated to the applicant and no further comment has been received. I therefore accept the cost estimates to be reasonable. The applicant has made no case for allowable deductions.

7.4. Appportioning

7.4.1. The planning authority intends apportioning cost of the proposed junction upgrade between four plots of similarly zoned lands within the immediate vicinity of the subject junction, totalling 3.1ha, on the basis of site area. Based on a site area of 0.4ha which would account for 12.9% of the total landbank to which the special development contribution would apply, the planning authority has calculated the relevant sum to be €33,290.26.

7.4.2. There is no statutory provision that the special development contribution must be paid by all benefitting developments (for example the redevelopment of the adjacent, extensive MP 11.E lands, subject of masterplan objective SANTRY 5, would also be expected to benefit) therefore the planning authority is entitled to limit the apportionment between the subject lands. The *Development Management Guidelines* (2007) suggests (p.85) that where the benefit of deriving from the particular infrastructure is more widespread, the Council should consider spreading the costs over the relevant geographical area by way of a revised or separate development contribution scheme. In this instance no separate or revised DCS has been made, but there is no obligation on the planning authority to do so.

7.4.3. There is no formula under the Act as to how the cost of provision of the relevant infrastructure or facility should be apportioned across benefitting development. I consider the apportioning of costs based on site size to be rational and reasonable and that the sum of €33,290.26 is the correct figure to be applied.

8.0 Recommendation

Having regard to the nature of special development contribution condition no.27, the subject of the appeal, and to the provisions under section 48 of the Planning and Development Act, 2000, as amended, based on the reasons and considerations hereunder, the Board directs the Council to **AMEND** condition no.27, as set out under section 10.0, below, to the sum of €33,290.

9.0 Reasons and Considerations

The Board is satisfied that the proposed public infrastructure the subject matter of the appeal (that is, the provision of an upgraded signalised junction between Old Ballymun Road and Northwood Avenue) is justified and that these works constitute specific exceptional costs that are not covered by the Fingal County Council Development Contribution Scheme 2016-2020; that the said proposed public infrastructure would benefit the proposed development; and that the costs of the works and the apportionment of those costs between the application site and other similarly zoned land parcels that would benefit from the works concerned is reasonable and proportionate. The Board therefore concludes that the imposition of condition no.27, as amended, below, conforms to the provisions of Section 48(2)(c) of the Planning and Development Act 2000, as amended.

10.0 Condition

The developer shall pay the sum of €33,290 (thirty three thousand, two hundred and ninety euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, in respect of the provision of an upgraded signalised junction between Old Ballymun Road and Northwood Avenue. This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of 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 considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

John Desmond
Senior Planning Inspector

31st October 2018