



An
Bord
Pleanála

Inspector's Report ABP-301736-18

Development	Construction of 7 blocks to provide 45 residential units, along with vehicular and pedestrian accesses, 60 car parking spaces, bin and bike storage, and landscaping and play areas.
Location	Ballincollig Townland, Ballincollig, Co. Cork.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	17/6860
Applicant(s)	Moreinis Developments Ltd
Type of Application	Permission
Planning Authority Decision	Grant, subject to 42 conditions.
Type of Appeal	Section 48(10)(b)
Appellant(s)	Moreinis Developments Ltd
Observer(s)	None
Date of Site Inspection	n/a
Inspector	Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located centrally within Ballincollig. This site is an island site insofar as it is bound on all sides by the road network, i.e., to the north and east by Innishmore Lane, to the west by Coolroe, and to the south by Main Street (R608). Ballincollig Technology Park lies to the north of the site, an office block lies to the east, Ballincollig Health Centre lies to the west, and a public house, supermarket, and shops lie to the south.
- 1.2. The site itself is of regular shape and it extends over an area of 0.93 hectares. This site is undeveloped and vacant at present.

2.0 Proposed Development

- 2.1. The proposal would entail the construction of 45 residential units in 7 blocks consisting of the following:
 - 3 one-bed apartments,
 - 16 two-bed apartments,
 - 20 three-bed apartments,
 - 2 two-bed townhouses, and
 - 4 three-bed townhouses.

Following receipt of further information, the total number of residential units proposed was reduced to 44.

- 2.2. Vehicular access would be provided to the north from Innishmore Lawn and three additional pedestrian accesses would be provided as follows:
 - To the west, from Coolroe,
 - To the south, from the R608, and
 - To the south east, from Innishmore Lawn.

- 2.3. Sixty car parking spaces would be provided along with bin and bike storage, landscaping and play areas, boundary treatments, and all ancillary site development works.

3.0 Planning Authority Decision

3.1. Decision

Following receipt of further information and clarification of that information, permission was granted subject to 42 conditions. Condition 2, which is the subject of this appeal, states the following:

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 €73,600 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 works to provide amenity facilities in the Ballincollig Regional Park.

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 had 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 sub-paragraphs (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 of 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.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The application was the subject of a request for further information and the clarification of that information.

In relation to the former, item 2 drew attention to the unacceptable level of functional/usable open space in the originally submitted layout, which was subsequently revised.

In relation to the latter, item 2 drew attention to the applicant's contention that 15% of the site would be public open space and questioned the accuracy of the same. The applicant responded by submitting a site layout plan (drawing no. 17037/P/003(B) revision P3), which highlights the following open space provision:

- Area 1: 0.1 ha,
- Area 2: 0.014 ha
- Area 3: 0.014 ha
- Area 4: 0.01 ha

If Areas 1 and 2 are aggregated, then a main open space total of 0.114 ha results, which represents 12.2% of the site's area. If the remaining two Areas are added-in, then 0.134 ha results or 15% of the said area.

The Planning Authority contested these figures and concluded that, as there would be a shortfall in public open space, draft condition 2 should be attached to the permission.

4.0 Policy Context

4.1. Development Plan

Under Section 5.5 of the Cork County Development Plan 2014 – 2020 (CDP), recreation and amenity are addressed. Under sub-sections 5.5.7 – 12, standards for public open space (POS) provision are set out. Thus, at least 12 – 18% of a site should be allocated for the provision of POS, with lower density schemes tending to 12% and higher density schemes tending to 18%. Where such provision cannot be met, “the Council may require a special development contribution to provide facilities in close proximity to development in lieu of on-site provision”. Minimum standards for the provision of recreational and amenity facilities are set out in the Council’s document entitled Recreation and Amenity Policy, which was adopted on 24th July 2006. This document is cited in Policy Objective SC 5-2 of the CDP. Policy Objective SC 5-4 undertakes to improve the quality and capacity of recreational facilities by, where appropriate, the use of its powers under Section 48 of the Planning and Development Act, 2000 – 2018.

5.0 The Appeal

5.1. Grounds of Appeal

- The appeal relates to draft condition 2 only and so it has been made under Section 48(10)(c) of the Planning and Development Act, 2000 – 2018. This condition is critiqued for the following reasons:
 - Contrary to Section 48(12)(a), the Planning Authority has failed to specify the particular works to be carried out.
 - The imposition of a special development contribution duplicates with the general development contribution charged under condition 42.
 - Contrary to Section 48(2)(c), the Planning Authority has failed to demonstrate that “specific exceptional costs” would arise with respect to public infrastructure and facilities, i.e. ones that would be of specific benefit to the proposed development and ones that would not have been

envisaged when the General Development Contribution Scheme was adopted.

- The applicant considers that the proposed amenity facilities in Ballincollig Regional Park would be neither “specific” or “exceptional”.
- The applicant recounts the revisions that were made to the proposal under further information.
 - It draws attention to Appendix A of the Planning Authority’s Recreation and Amenity Policy and the points value table contained therein. It contends that the proposed grassed/kick about area would attract 4 points and each of the two neighbourhood play areas would attract 1 point: hence 6 points out of a possible total of 7 would be secured. The said Policy requires that only 30% of the requisite points need to be secured by on-site provision, i.e. 2 points in this case.
 - It also draws attention to conditions 6 and 7, which require the implementation of the on-site open space provision and it reiterates its contention that 15% of the site area would thereby be allocated to POS.
- The applicant draws attention to the commentary given in the Ballincollig-Carrigaline Municipal District Local Area Plan 2017 on recreational and sports facilities which are available in Ballincollig. The western portion of the town, wherein lies the subject site, is well served in these respects by the Ballincollig Regional Park, whereas the eastern portion is relatively under provided. Given the size and range of facilities already available in this Park, the applicant questions the need for the special development contribution cited under condition 2.
- Given the applicant’s aforementioned assessment that the proposal would only be down 1 point, if a special development contribution is to be acceded to, then it should be €18,400 rather than €73,600.
- The aforementioned duplication with the General Development Contribution Scheme is borne out by its reference to objectives which include “community and recreational amenity”. In this respect, the report of a Board inspector is

cited as emphasising that recourse to a special development contribution in lieu of POS is intended to be for exceptional circumstances only.

- Attention is drawn to the reports (PL04.234024 and PL04.238720) of Board inspectors who considered that, under Section 48(12)(a), the failure to specify the particular works to be carried out rendered the special contribution condition invalid in each case. In this respect, the inclusion of a refund mechanism within the said condition envisages a scenario wherein works have not proceeded and so is predicated on such works being identifiable. These cases establish precedents that should inform the Board's decision on the current appeal.

5.2. **Applicant Response**

n/a

5.3. **Planning Authority Response**

None

5.4. **Observations**

None

5.5. **Further Responses**

None

6.0 **Assessment**

- 6.1. The applicant has appealed draft condition 2 of the permission granted to application 17/6860. As this condition relates to a special development contribution, this appeal has been made under Section 48(10)(b) of the Planning and Development Act, 2000 – 2018 and so, under Section 139(1)(c) of the Act, the Board can consider this condition in isolation: a *de novo* assessment of the proposal is not therefore required.

- 6.2. Condition 2 requires the payment of €73,600 for “works to provide amenity facilities in the Ballincollig Regional Park”. It has been derived from an assessment of the proposal which concludes that, under Appendix A of the Planning Authority’s document entitled “Recreation and Amenity Policy”, POS attracting 7 points would be needed and yet the level of provision proposed would only attract 3 points. Thus, a shortfall of 4 points would ensue and, as each point would warrant a penalty of €18,400, a special development contribution of €73,600 should be levied.
- 6.3. The applicant contests the need for a special development contribution, in principle, and, if the principle is conceded, the aforementioned total. It contends that rather than 3 points the level of provision proposed would only attract 6 points and so a shortfall of 1 point would ensue: hence the relevant special development contribution should be €18,400.
- 6.4. Under Paragraphs 5.5.7 – 12 of the CDP, standards for POS provision are set out. The first of these paragraphs states that at least 12% to 18% of a site should be allocated to POS with lower density schemes tending towards 12% and higher density ones tending towards 18%.
- 6.5. Under clarification of further information, the applicant submitted a landscape plan (drawing no. P305 00 revision 05) and a site layout plan with open space highlighted (drawing no. 17037/P/003(B) revision P3). If these two plans are compared, then the following picture emerges:
- Area 1 would comprise a kick about area and a neighbourhood play area,
 - Area 2 would comprise a neighbourhood play area,
 - Area 3 would comprise a proposed grass lawn adjacent to the vehicular entrance to the site and a bike shed, and
 - Area 4 would comprise a cluster of trees in the south-western corner of the site and adjacent to Block A and a bike shed.
- 6.6. The applicant refers to Areas 1 and 2 as “main open space” and it calculates that their combined areas would be 0.114 hectares. As Area 3 would be incidental open space and Area 4 would be a landscaped area only, I consider that only the main open space would constitute POS.

- 6.7. The combined area of the aforementioned POS would be 0.114 hectares. As the total area of the site is 0.93 hectares, the said combined area would represent 12.26% of the total. Under Paragraph 5.5.7 of the CDP, this level of provision would be appropriate to a low density scheme.
- 6.8. Under Policy Objective HOU 4-1 and accompanying Table 3.1 of the CDP, a high net density of a minimum of 35 dwellings to the hectare is appropriate to the subject site, as one that is centrally located within Ballincollig and close to a high quality public transport corridor. The proposal in its revised form is for 44 dwellings on a 0.93-hectare site, a figure that represents a net density of 47.31 dwellings to the hectare. Thus, if the equivalent of 35 dwellings per hectare would be a low density for this site, then 47.31 would certainly be a medium density, if not a high one.
- 6.9. In the light of the foregoing paragraph and the range of 12% to 18% set out in Paragraph 5.5.7 of the CDP, I consider that at least 15% of the site area should be POS. At 12.26%, the proposal would register a quantifiable shortfall.
- 6.10. Turning to the question of points that separates the parties, I note that they both agree that, under Policy Objective SC 5-2 of the CDP and Appendix A of the Planning Authority's document entitled "Recreation and Amenity Policy", each of the proposed neighbourhood play areas would attract 1 point. Where they disagree is over the number of points to be assigned to the kick about area. The difficulty in this respect is that Appendix A does not explicitly refer to a kick about area.
- 6.11. The proposed kick about area would be roughly triangular in shape with two of the three corners chamfered. This area would extend over 400 sqm. However, its dimensions would fall well short of even the most modest football pitch, i.e. a five-a-side pitch would be 1003.75 sqm (36.5m long x 27.5m wide). It would thus function as an informal kick about area only. Given the shape and size of the area, I do not consider that it would be likely to be used by non-residents of the proposed development and so I consider that it should be categorised as a neighbourhood play area rather than a local play area. I, therefore, concur with the Planning Authority's assignment of 1 point to this kick about area.
- 6.12. In the light of the foregoing discussion, I consider that the assignment of 3 points to the proposed POS provision is appropriate. As 1 point is generated by 6 dwellings and the proposal in its revised form would have 44 dwellings, 7 points would be the

requisite number. A shortfall of 4 would thus arise, as calculated by the Planning Authority.

6.13. The applicant critiques condition 2 on the following grounds:

- It fails, under Section 48(2)(c), to identify any specific exceptional costs that are not covered by the Planning Authority's General Development Contribution Scheme (GDCS) in respect of public infrastructure and facilities which benefit the proposed development. Accordingly, it would duplicate this Scheme and its application to the proposal under condition 42, and
- It fails, under Section 48(12)(a), to specify the particular works that it would fund.

6.14. The first of these grounds refers to the fact that one of the objectives underpinning the Planning Authority's General Development Contribution Scheme (GDCS) is that of "community and recreational amenity". Thus, a portion of the general development contribution required under condition 42 would fund recreational amenity. As condition 2 would require payment of a special development contribution to fund amenity facilities in Ballincollig Regional Park, it, too, would fund recreational amenity and so duplication would occur.

6.15. With respect to the risk of duplication, I note that if there was no shortfall in the area of the proposed POS and in the points attracted by this POS, then the same general development contribution would still be required. Thus, as there is such a shortfall, the remedy for this must lie elsewhere. Specific exceptional costs would arise in this respect. I note, too, that it is not reasonable to suppose that the GDCS would have foreseen this specific shortfall, as, insofar as this Scheme addresses the funding of community and recreational amenity projects, it does so for the County as a whole.

6.16. The second of these grounds refers to a lack of specifics with respect to the particular works that would be funded, i.e. condition 2 cites "the provision of works to provide amenity facilities in the Ballincollig Regional Park". The case planner's report further states that "given the proximity of the Ballincollig Regional Park and the on-going cost of the provision of amenity facilities at the same, it is considered reasonable to charge a special development contribution..." This position reflects Policy Objective SC 5-4 of the CDP, which commends the use of Section 48 powers to achieve the enhancement of recreational facilities.

- 6.17. I note that Ballincollig Regional Park is 0.8 km away from the site. I note, too, that the case planner's reference to "the on-going cost" is somewhat ambiguous, i.e. are maintenance costs envisaged or the cost of replacement/new facilities? Regrettably, as the Planning Authority has not responded to the appeal, no clarification of this matter has been forthcoming. However, given the aforementioned citation from the condition itself, I consider that it is reasonable to adopt the latter rather the former interpretation.
- 6.18. Given the proximity of Ballincollig Regional Park to the subject site, I consider that it is likely that residents of the proposed 44 dwellings would use this Park and so it would be a reasonable location for any compensatory amenity facilities to be provided in order to remedy the shortfall that would arise on this site. Such facilities would thus, in the words of Section 48(2)(c), "benefit the proposed development".
- 6.19. I recognise that while the location of the amenity facilities has been identified the exact nature of them has not. In this respect, the situation appears to be analogous to special development contributions that are required to fund off-site car parking spaces. In such cases, the exact nature of the works is known but their location is typically unknown. Nevertheless, the "particular works" of the attendant conditions are not questioned. By the same token, I consider that the description of the "particular works" of condition 2 is adequate.
- 6.20. The applicant draws attention to the refund mechanism that is built into condition 2. It states that for this mechanism to work the absence of "particular works" would need to be capable of being ascertained. If the applicant was to seek proof from the Planning Authority that the special development contribution had been spent, then the Authority should demonstrate as much, i.e. it should be able to identify which amenity facilities were funded thereby. Failure to do so would, presumably, provide grounds for the refund mechanism to be triggered. Again, an analogy can be drawn with off-site car parking spaces, where the applicant may wish to know where they were subsequently located or, in their absence, seek a refund.
- 6.21. I, therefore, conclude that condition 2 as drafted by the Planning Authority is warranted as it would reflect the requirements of Paragraphs 5.5.7 – 12 and Policy Objectives SC 5-2 and SC 5-4 of the CDP and the accompanying adopted Recreation and Amenity Policy of the Planning Authority and it would come within

the relevant parameters set out by Section 48 of the Planning and Development Act, 2000 – 2018.

7.0 Recommendation

7.1. That the Planning Authority be directed to confirm condition 2.

8.0 Reasons and Considerations

Having regard to Paragraphs 5.5.7 – 12 and Policy Objectives SC 5-2 and 5-4 of the Cork County Development Plan 2014 – 2020, Appendix A of the Planning Authority's adopted Recreation and Amenity Policy, and Section 48 of the Planning and Development Act, 2000 – 2018, it is considered that the attachment of condition 2 to the permission granted to application 17/6860, as drafted by the Planning Authority, would be an appropriate means of addressing the shortfall in the provision of public open space that would arise under the proposal for the subject site and it would comply with the requirements for special development contribution conditions set out under Section 48 of the Act. Condition 2 would thus accord with the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

26th October 2018