



An
Bord
Pleanála

Inspector's Report ABP.301769-18



Development	Construction of 10 no. houses including access, parking, drainage and landscaping
Location	Togher Cross, Lehenagh More Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	17/6618
Applicant(s)	TFT Construction Ltd.
Type of Application	Planning permission
Planning Authority Decision	Grant permission
Type of Appeal	First Party
Appellant(s)	TFT Construction Ltd.
Observer(s)	None
Date of Site Inspection	1 st October 2018
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1.** The site is located at Togher Cross, which is a suburban area to the south of the N40 in the southwest of the city. The site is located close to a roundabout junction with Togher Road, Spur Hill and Lehenaghmore Hill, and it is to the south-east of this junction. There are several housing estates to the south of the site, Palmbury Orchard to the east and Brooke Avenue to the west. There are several detached houses fronting Togher Road leading southwards to the northern boundary of the site. The site is bounded to the east by an access road serving terraced houses and an area of public open space, which also wraps around the southern boundary of the site. The western side of Lehenaghmore Hill is defined by the Tramore River, which follows the line of the road and is bounded by a low plinth stone wall and mature vegetation. There are further detached houses to the west of the river which front onto Spur Hill. The entrance to Brooke Avenue is located opposite the site.
- 1.2.** The site is stated as being c.0.2693ha in area. The site is currently under construction, but I note from the Area Planner's report that there was formerly a house with several outbuildings on the site and it was accessed from Lehenaghmore Hill. There is a stone wall along the roadside boundary, which is stated in the P.A. reports as being a protected structure. This wall appears to have been broken through at the northern and southern ends, although it is possible that existing openings have merely been widened. There is a foot path alongside the stone wall, which is quite narrow and terminates in a northerly direction before the junction with Togher Road, but recommences further north. On the western side of the road, there is no footpath alongside the river, but at the southern end, the river is culverted which facilitates a footpath leading to Brooke Avenue. There is a zebra crossing leading from the start of the culvert to the southern opening in the boundary wall of the site.

2.0 Proposed Development

- 2.1.** The proposed development involves the construction of 9 no. houses (one omitted in revised submissions). It was originally proposed to construct 10 houses in two

blocks, but the revised layout shows the 9 houses arranged in three blocks. Block A comprises 4 houses fronting onto Lehenaghmore Hill at the northern end of the site. Block B proposes 3 houses in the centre of the site close to the eastern boundary. Block C includes two dwellings at the southern end of the site, backing onto the eastern boundary. The proposed access point is to the south of the zebra crossing on Lehenaghmore Hill.

- 2.2.** The drawings submitted with the original proposal did not include the location of the zebra crossing or any changes to the public footpaths. However, following a request for further information and the carrying out of an RSA, changes to these items were subsequently proposed. These will be outlined below.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission for 9 no. houses only subject to 44 no. conditions.

Condition 3 – Site layout as per plan submitted on 16/04/18.

Condition 5 – Revised drawings showing precise layout of vehicular entrance, including the incorporation of a raised pedestrian crossing and tight radius kerbs, to be submitted to P.A. for agreement prior to commencement of development.

Condition 6 – Revised drawings showing a 2m wide concrete lit footpath along the entire frontage of the development to be submitted and agreed prior to commencement of development.

Condition 24 – Any damage to estate roads and footpaths to be repaired at the developer's expense.

Condition 42 – A Special Development Contribution of €80,000.00 shall be paid to Cork Co. Co. in respect of specific exceptional costs not covered in the Council's General Development Contribution Scheme in respect of works proposed to be carried out, for the modification of the public footpath opposite the applicant's site; modification of the existing zebra crossing with associated road markings; and road pavement improvements.

Condition 44 – A Financial Contribution of €13,838.08 to be paid in accordance with the General Development Contribution Scheme.

3.2. Planning Authority Reports

3.2.1. Planning Reports

It was noted that the site had formerly been the subject of a grant of planning permission (06/4316) for the construction of 11 houses, which has since expired. However, a house that had been present on the site was demolished following the grant of permission, although the permission was not implemented. The main issues highlighted in the first Planner's report (22/11/17) incorporated a wide range of issues including layout, access, design etc., which resulted in a request for FI on 27th Nov. 2017. However, as the appeal that is currently before the Board relates to a Special Contribution condition regarding roads and access matters, I will confine the summary of the matters raised to those that are relevant to the current appeal.

- The Area Engineer had identified a problem with the proposed access in terms of the relationship with the existing zebra crossing and the lack of adequate sightlines.
- The adequacy of public footpaths serving the development and of proposed footpaths within the development was also identified as being of concern.

Other matters raised related to matters such as drainage, flooding, layout and design, public lighting, boundary treatment and landscaping. It was concluded that the proposed development should be deferred pending the receipt of further information as set out in the P.A.'s letter of 27/11/17. This included a request for

- A Road Safety Audit on pedestrian and vehicular access, demonstration that adequate sightlines can be achieved,
- Revised drawings showing the existing zebra crossing, and
- A 2m wide footpath between the edge of the public road and Block A and throughout the development.

3.2.2. Other Technical Reports

Roads - 22/11/17 - It was noted that this is a very busy local road in Togher and that sightlines are very poor. Sightlines must be measured to the nearside edge of the carriageway. It was further requested that the zebra crossing be shown on the plans, together with a road safety audit and adjustments to the parking provision. FI was requested in respect of the foregoing.

Estates Section – 3/11/17 - Issues raised related to layout, number of houses, adequacy of footpaths and parking provision, road layouts, widths and turning areas. Issues were also raised in respect of boundary treatments, open space requirements and public lighting. FI was required.

Housing Office – 2/11/17 - No objection to permission.

Public lighting – 31/10/17 - The information provided with the application was considered inadequate and further information was requested.

3.2.3. Further Information January 2018

Further information was submitted on 24th January 2018. This included

- A Road Safety Audit
- Revised drawings including revisions to the site entrance;
- A proposal to relocate the zebra crossing;
- Proposals to upgrade the public footpath alongside the site (wall to be moved back by 2.0m); and
- Realignment of footpath adjacent to the exit from Brooke Avenue on the opposite side of the public road.

However, the sightlines available in a northerly direction (36.4m) fell short of the required minimum of 49m. This was considered to be wholly unacceptable. Concern was also expressed about the enforceability of any conditions to require the developer to carry out works outside of the red line, such as the relocation of the zebra crossing and the resolution of the 600mm pinch-point (footpath) to the north of the site. The abrupt termination of the footpath to the south of Block A was also a concern.

It is noted that the Area Engineer (6/2/18) could not recommend permission as the sightlines were still inadequate and due to the failure to address the issues raised in

the RSA. He was satisfied with the siting of the relocated zebra crossing, but considered that, as it is outside the red line boundary, the developer could not be compelled to carry out the works. He also noted that the 600mm pinch point in the public footpath to the north is outside the control of the applicant. He, therefore, considered that a **Special Contribution** of **€100,000** should be levied towards the cost of resolving the public footpath issue, which was likely to include CPO costs, and that the developer should be asked to undertake the works to the pedestrian crossing. The proposed footpath to the south of Block A was also required to be extended.

These matters, along with several others, were the subject of a request for clarification on 13th February 2018.

3.2.4. Further Information March 2018

The FI submitted on 22/3/18 included

- A letter agreeing to undertake the works to relocate the pedestrian crossing;
- Revised drawings showing the footpath to the south of Block A extended; and
- Justification for retaining the vehicular entrance in the same location. This was based on the fact that planning permission had previously been granted by the P.A. for a similar development on the site with the same entrance location. It was mooted that the main problem is the pinch point in the footpath and that relocating the entrance would not address this issue.

However, the Area Engineer was not satisfied with the revised proposals in respect of the location of the vehicular entrance, and associated sightlines available in a northerly direction, which had not changed. He also remained dissatisfied with the parking arrangements. A further report from the Senior Engineer (Traffic), dated 10/04/18, agreed with the Area Engineer's conclusions that permission could not be recommended on road safety grounds, with particular reference to the RSA issues and the absence of adequate sightlines.

The Area Planner (10/04/18) also agreed with this assessment and recommended refusal on these grounds. The Senior Engineer, however, stated that in the event of a grant of permission, he considered that a **Special Contribution** of **€100,000** should be levied towards the cost of provision of the required pedestrian crossing

and the improvement of pedestrian connectivity to the development, as detailed in the RSA.

3.2.5. Further Information April 2018

Further information was submitted on the 12th and the 16th April 2018. The first submission consisted of a letter from the applicant (**12/04/18**) which reiterated the justification for not moving the entrance and outlining the problems with the footpath pinch point. It was further stated: -

“We feel that the existing narrow footpath is outside of our control, as a third party owns these lands. We are however, willing to pay a special contribution to be determined by Cork County Council to facilitate sightlines.”

The second submission (**16/04/18**) comprised a revised Site Layout Plan (1713-A09 Rev 2) and a Sightlines Plan (1713-A08 Rev 2). These showed that a sightline of 49m would now be achieved in a northerly direction. The revised location for the zebra crossing was also omitted and the existing crossing was shown as is. The proposed entrance was relocated further to the south, as Block A was enlarged and Block C relocated within the site.

The Senior Engineer's report (17/04/18) stated that there was no longer opposition to granting permission and recommended 3 no. conditions. Firstly, the applicant would have to receive the written consent of the P.A. to the precise layout of the entrance. Secondly, a 2m wide lighted concrete footpath to be provided along the full frontage of the site. Thirdly, a Special Contribution to be paid, €80,000, towards the costs of modifying the public footpath opposite the entrance, modification of zebra crossing and road pavement improvements.

The further information was deemed significant and was advertised. No third-party submissions were received.

The final planning report was from the Senior Planner (10/05/18). This indicated that the application had been discussed at a management meeting and it had been decided to grant permission for the revised layout (16/04/18) subject to conditions (including those recommended by the Senior Engineer). It was noted that the

amount of Special contribution had been reduced to €80,000 because “they had moved the entrance and there is less involved”.

3.3. Prescribed Bodies

Irish Water 20/11/17 – No objection subject to conditions.

Inland Fisheries Ireland 25/10/15 – no objection to drainage proposals provided that Irish Water has no objection and signifies that there is sufficient capacity in the public sewer, both hydraulically and organically. Should permission be granted, a condition is sought which specifies that there would be no interference with, bridging, draining or culverting of any watercourse, its banks or bankside vegetation to facilitate the development without the approval of IFI.

3.4. Third Party Observations

None.

4.0 Planning History

06/4316 – planning permission granted for 10 no. 2-storey town houses in two blocks. Application was for 11 units but one was omitted.

11/5804 – planning permission granted for extension of duration of permission 06/4316 until 20/09//16. This has since expired.

5.0 Policy Context

5.1. Development Plan

Cork County Development Plan 2014

Ballincollig-Carrigaline Municipal District Local Area Plan 2017

Zoned Existing Built Up Area

5.2. Natural Heritage Designations

The closest designated site is Cork Harbour SPA (004030), which is c.5km to the east.

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal was submitted by McCutcheon Halley Planning Consultancy on behalf of the applicant. The appeal is against Condition No. 42 only, which requires the payment of a Special Contribution of €80,000 in respect of works involving modification of the public footpath opposite the site entrance; modification of the zebra crossing and associated road markings; and road pavement improvements. The main points raised may be summarised as follows:

- **Not 'Specific' or 'Exceptional'** - The Council has not demonstrated that the costs incurred are either specific or exceptional as stated in the reason for the condition, and as required by Section 48(2)(c) and 48(12) of the Planning and Development Act 2000. There is an onus on the P.A. to demonstrate that the works are 'exceptional' in the sense that they could not have been envisaged at the time that the Development Contribution Scheme was approved. It is also required that the P.A. demonstrate that the works are 'specific' to this development and would benefit the permitted scheme rather than the general area, and would not be incurred at all if the proposed scheme did not go ahead.
- The onus is on the P.A. to specify the particular works carried out or which are proposed to be carried out in accordance with Section 48(12)(a) of the P & D Act. This requirement is so that, in the event that the specific works are not carried out within 5 years of the payment of the contribution, it must be refunded. Thus it must be possible to be able to see exactly what specific works are proposed to be carried out. The P.A. has failed to provide a clear and transparent calculation as regards the value of the contribution. The condition should therefore be omitted in its entirety.

- **Previous 06/4316 permission had no special contribution attached and required levy is completely disproportionate and unwarranted** - The Council did not require a special contribution payment in respect of the permission for 10 houses on the site under 06/4316, and extended under 11/5804. Given that the current proposal is for a decrease in the number of units, it is completely disproportionate and unwarranted. The Development Contribution Guidelines state that such levies should not be seen as “cash cows” and that a balance needs to be struck between the funding of public infrastructure and the need to encourage economic activity and sustainable development patterns. The P.A. has not provided sufficient justification to warrant the costs of the works sought by the special contribution particularly given the current acute shortage of housing and will not promote sustainable development patterns.
- **Double charging** - The Council is requiring the payment of this special contribution in addition to the payment of a contribution under the General Development Contribution Scheme. It is disputed that there is a deficiency in the infrastructure and the charge towards pedestrian crossing/pavement improvements in addition to a charge under the GDCS amounts to Double Charging, as the GDCS already includes a levy for ‘roads and traffic management infrastructure’. The practice of double charging is inconsistent with the Development Contribution Guidelines (2013) in terms of both “the primary objective of levying development contributions and with the spirit of capturing planning gain in an equitable manner.” The DoECLG’s Guidelines also require that there is a clear and explicit alignment or connection between the GDCS and objectives for a particular area. As this has not been achieved, it is requested that the Board remove condition No. 42.
- **Anomaly in P.A. decision given the requirement to provide pedestrian facilities** – The basic premise of the need for the Special Contribution is that there is a deficiency in traffic and transport infrastructure, but no such deficiency was raised in 06/4316. Conditions 5 and 6 of the current permission also require the applicant to provide pedestrian facilities, including a controlled pedestrian crossing. P.A. is therefore incorrectly seeking that the applicant pay a special development contribution in conjunction with

undertaking road improvement works. The applicant has contributed to the provision of road improvements through the provision of a pedestrian crossing, (Condition No. 5), and a 2.0m wide lighted concrete footpath along the frontage of the development, (Condition No. 6) of the planning permission. As can be seen from Drg Ref. BC-CL-P01 Rev. 1, the permitted development includes the provision of works relating to the modification of the public footpath adjacent to the site, modification of the existing zebra crossing and associated road markings in addition to road pavement improvements.

- The P.A. cannot on the one hand seek a special contribution towards a perceived shortfall in the pedestrian infrastructure and on the other hand require the applicant to provide the same pedestrian crossing/pavement improvements. Given the significant contribution towards road improvement works, the applicant should not be charged for resurfacing/general improvement road improvement works as this would amount to double charging.
- **Precedents where Board has omitted special development contribution conditions in similar circumstances.** Reference is made to the following precedents:

PL04.234024 – condition removed as the P.A. had failed to specify the nature, scope and details of expenditure of infrastructure including pedestrian/cycle facilities on which it was based. I note that this case does not relate to an appeal against a special contribution condition, but to a refusal of permission. However, the quotation included in the grounds of appeal is attributed to a different case, i.e. ABP300056-17, which does relate to an appeal against a financial contribution condition.

PL04.232465 – it is submitted that the board had concluded that the works did not relate to specific exceptional costs. Again, this case relates to an appeal against a refusal of permission but the quotation in the grounds relates to PL04.232458, which does involve an appeal against a financial contribution condition.

PL04.242829 – it is submitted that the Board had concluded that it is inappropriate to impose a special contribution towards infrastructure and also to require the applicant to undertake works relating to the same infrastructure.

- **Section 139** - It is requested that the appeal be dealt with under Section 139 of the 2000 Act and that Condition 42 be omitted.

6.2. Planning Authority Response

The P.A. responded to the grounds of appeal on 28th June 2018 as follows:

“The Senior engineer in the Council’s Traffic and Transport Section initially sought a special contribution of €100,000 for the ‘improvement of the footpath network in the area necessary for pedestrian connectivity and as per the detailed Road Safety Audit submitted by the applicant with the application, in his report dated 10/04/2018. Subsequent to this report and on foot of unsolicited further information which moved the entrance to the south as initially requested, the figure was reduced to €80,000, as the existing zebra crossing and footpath has to be realigned. As these works are required only to facilitate the proposal it is our opinion that it is a fair and reasonable special contribution and would request the Board to reject the appeal.”

6.3. First party response to P.A. submission of 28/06/18

The first party response was received on 3rd August 2018. This mainly reiterated the grounds of appeal. It was also pointed out that the P.A. response had not provided a detailed breakdown of the calculations upon which the contribution is based. Thus the P.A. has not provided sufficient justification to warrant the costs of the works, which is considered to be disproportionate to the permitted development.

7.0 Assessment

7.1 Legislation and Guidance

- 7.1.1. As the appeal is solely against Condition 42 of the planning permission, relating to a Special Financial Contribution, Section 48(13)(a) of the Planning and Development Act 2000, as amended, applies. This requires that the Board shall not determine the

relevant application as if it had been made in the first instance, but shall determine only the matters under appeal.

7.1.2. Condition 42 requires the payment of a special contribution of **€80,000**

“.....in respect of specific exceptional costs not covered in the Council’s General Development Contribution Scheme, in respect of works proposed to be carried out for the provision of works relating to the modification of the public footpath opposite the applicants site, modification of the existing zebra crossing and associated road markings in addition to road pavement improvements required to facilitate this development.....”

7.1.3. I note that there is also a condition (No. 44) attached to the permission requiring the payment of a financial contribution in respect of public infrastructure and facilities benefitting development in the area under the adopted Cork County General Development Contribution Scheme, made under Section 48(2)(a) of the Act. There are also two further conditions attached to the permission (Nos. 5 and 6) which require the applicant to carry out specific infrastructural works at his own expense in the vicinity of the development, namely in respect of providing pedestrian crossing as part of the new vehicular entrance and a new footpath alongside the western boundary of the development.

7.1.4. Section 48(2)(c) of the P&D Act 2000 as amended provides for the payment of a Special Contribution and further guidance on the matter is provided in the Development Management Guidelines, 2007 (Section 7.12). It is clear from the legislation and the guidance that such a requirement should only be made in respect of a particular development, whereby demands likely to be placed on the public services and facilities are deemed to be exceptional, thereby incurring costs not covered by the General Development Contribution Scheme.

7.1.5. It is further clear that such a condition must be amenable to implementation under the terms of S 48(12) of the Act. This means that the basis for the calculation should be clear from the planning decision. The Guidelines state that

“this means that it will be necessary to identify the nature/scope of the works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.”

7.2. **Specific or exceptional costs**

- 7.2.1. The wording of Condition 42 states that the contribution is required in respect of “specific exceptional costs not covered in the Council’s General Development Contribution Scheme”. The appellant claims that there is no deficit in the pedestrian infrastructure that would need to be bridged by means of a special contribution in order to facilitate this development. The lack of any requirement to pay such a special contribution under the previous permission (06/4316) is cited as evidence supporting this argument. It is further argued that the failure of the P.A. to demonstrate that the works are exceptional and specific to this development means that the condition should be omitted.
- 7.2.2. It is considered, however, that the requirement in the Guidelines to be ‘specific’ and ‘exceptional’ does not necessarily mean that the works can only serve the particular development proposal and not provide any benefits to the wider community. I would accept that the P.A. has not provided a detailed breakdown of the costs involved per item of the required infrastructure. However, the specific elements that are to be facilitated by means of the special contribution are set out in the condition. These items have been the subject of much discussion in the planning and technical reports, which are very detailed and contain further clarification on the justification for the conditions attached. The planning authority identified serious concerns regarding road safety and pedestrian safety and connectivity matters. The requests for further information and for clarification of FI had sought to address these concerns and the applicant had responded by proposing the modifications to the footpath opposite the site and the provision of a 2.0m wide footpath along the western boundary of the development. However, the proposed siting of the vehicular entrance, which the applicant was reluctant to change, posed particular problems for both the achievement of adequate sightlines and pedestrian safety/connectivity. These concerns were of such gravity that the Area Engineer, the Senior Engineer and the Area Planner had each resolved to recommend refusal of the project.
- 7.2.3. The pedestrian connectivity in the immediate vicinity of the site is problematic. There are several residential developments adjacent to and south of the site that are linked to the convenience retail facilities and community services centred around Togher Cross by means of a poorly developed pedestrian network. The footpath adjacent to the site is an important element in the network, but is substandard in width and incorporates a pinch point of 600mm immediately north of the site. The western side

of Lehenaghmore Hill is bounded by the Tramore River south of the roundabout, which is a constraint to the provision of a footpath on that side of the road. Thus, the zebra crossing, which I estimate is located c.350m south of the pinch point, forms a critical part of the pedestrian link to Togher Cross. The P.A. reports indicate that the introduction of the vehicular entrance as shown on the plans submitted with the application, (which I estimate to be c.240m south of the pinch point, with the width of the entrance stretching southwards to c. 350m), created a safety hazard for pedestrians, as the crossing discharged directly onto the vehicular entrance. There was a further concern that the poorly aligned footpath on the opposite side of the road would give rise to haphazard pedestrian crossing of this busy road. In addition, the P.A. had grave concerns regarding the sightlines available at the entrance and sought the relocation of the entrance.

7.2.4. The concerns highlighted above were also identified as problems in the Road Safety Audit carried out by the applicant (at the request of the P.A.). The applicant had initially proposed to resolve these issues by relocating the zebra crossing to the south of the proposed entrance; modifying the footpath on the opposite side of the road so that it had a tighter kerb radius; and by providing a footpath alongside the development on the eastern side of Lehenaghmore Hill. Although the P.A. had welcomed the proposed initiatives, it remained concerned that the sightlines were wholly inadequate and that some of the proposed remedies were outside of the applicant's control, namely the modifications to the footpath opposite and to the zebra crossing. It had, therefore, been proposed to recommend refusal until an unsolicited FI was submitted on 16/04/18, which showed the relocation of the entrance to a point c.380m south of the pinch point. This meant that the zebra crossing could remain more-or-less in its current location and critically, that adequate sightlines could be achieved. The P.A. technical reports indicate that the revisions had rendered the proposal to be satisfactory, subject to a number of conditions, namely Nos. 5 and 6 which required specific works to be carried out, and No. 42, which required the payment of a special contribution towards further works to be carried out.

7.2.5. The Guidelines require that the nature/scope of the works and the expenditure involve be specified. Although the wording of the condition does not specifically state the expenditure for each individual item, it is considered that the intention of the

condition is clear and is supported by the planning and technical reports, and that the proposed works are specific exceptional costs that would be incurred by the planning authority arising from the proposed development and which are not covered by the General Development Contribution Scheme. I would accept that they come within the scope of Section 48 (2)(c) of the Act.

7.3. Anomaly in decision between works to be undertaken by developer and those the subject of the special contribution condition.

- 7.3.1. The first condition (No. 5) addressed the need for a detailed design of the proposed new entrance. It sought written agreement to “a precise layout of the vehicular entrance to the development including the incorporation of a raised pedestrian crossing and tight radius kerbs”. This is considered to be a reasonable condition as it merely addresses the pedestrian safety issues associated with the new entrance to the development, which is within the control of the applicant, (i.e. within the red line boundary). I do not agree that it duplicates the need for modifications to the zebra crossing or other pedestrian infrastructure in the area. The second condition, (No. 6) seeks the submission of revised proposals for written agreement which “make provision for a 2.0m wide lighted concrete footpath along the full frontage of the development”. This condition seems reasonable as it relates to a proposal already shown on the submitted plans and is within the control of the applicant. I do not agree that this requirement duplicates requirements for modifications to pedestrian infrastructure elsewhere.
- 7.3.2. The other items that had been the subject of FI submissions were specified as part of the special contribution condition (No. 42). These relate to the modifications to the footpath opposite the site, which were repeatedly shown on the submitted plans, but were identified as being outside of the control of the applicant, and the modifications to the zebra crossing. It is considered that the extent of the latter is likely to depend on the precise layout of the vehicular entrance. As these items, as well as the associated changes to road markings and road pavement improvements, are outside the control of the applicant, it seems reasonable that they should be the subject of a contribution condition. Given that they arise from the proposed changes to the layout of the road and pedestrian network, and give rise to additional demands on the

existing pedestrian infrastructure, it is considered that they relate specifically to the development.

- 7.3.3. It is considered that the works specified in Conditions 5 and 6 differ from the works specified in Condition 42 in terms of the ability of the applicant to carry them out and, hence, enforceability of the conditions. Thus, I do not accept that there is an anomaly in the P.A. decision in this regard.

7.4. Double charging

- 7.4.1. The applicant considered that the P.A. was engaging in the practice of double charging in two ways. Firstly, the requirement to provide the physical infrastructural improvements, (footpath along western boundary and incorporation of a raised pedestrian crossing into the new vehicular entrance), effectively resulted in duplication of the requirement to provide for infrastructural upgrade works. Secondly, the requirement to pay a contribution under the GDCS in addition to the payment of a special contribution amounts to double charging for the same infrastructural improvements.
- 7.4.2. I have already addressed the first form of double charging under section 7.3 above. In addition to the foregoing, it is considered that the requirements of Conditions 5 and 6 relate to a need to address the substandard width of the stretch of footpath directly adjoining the development and to the need for a continuous safe pedestrian route across the mouth of the new vehicular entrance. These matters would not just facilitate pedestrian safety and connectivity in the area but would directly benefit the future occupants of the residential development the subject of the permission. The Special Contribution condition, on the other hand, relates to the modifications to an existing substandard footpath opposite the site, which would be exacerbated by the introduction of the new vehicular entrance opposite, and to modifications that are likely to be needed to the zebra crossing following the introduction of the new entrance. I would accept that the reference to the road pavement improvements is a little vague. However, it would be reasonable to assume that the intensity of the road works proposed to the layout of this short stretch of road is likely to result in the need for resurfacing of the stretch between the proposed entrance and the pinch point. I do not agree, therefore, that the required contribution would amount to double charging.

- 7.4.3. In terms of the second form of double charging, Condition 44, requires a payment in respect of the General Development Contribution Scheme, which includes road improvement works. It is noted that the current plan for the area, Ballincollig-Carrigaline Municipal District LAP (2017), which is in line with the objectives of the Cork CDP (2014) and with national sustainable development policy objectives, seeks to provide for safe and convenient walking routes, particularly between towns and residential areas. The site is located in the Cork City South Environs area, which is described in the MDLAP as being heavily dependent on the road network, which suffers from peak hour congestion (3.5.19). It is further stated that in order to relieve this congestion, it will be necessary to enhance the local road infrastructure, facilitate greater public transport use and create a more pedestrian friendly urban setting.
- 7.4.4. In respect of the Togher/Doughcloyne/Lehenaghmore area specifically, the MDLAP states that during the lifetime of the Plan, provision shall be made for adequate footpaths and lighting in this area (3.5.64). This area is earmarked for continued expansion of population and housing growth. Significant road improvements are identified as being needed along with provision of footpaths, public lighting and cycling routes from Togher village to the residential areas surrounding it. Objective SE-GO-07 seeks to develop a network of designated walking and cycling routes to provide safe, convenient and pleasant routes between the town's main residential areas, schools and the town centre in line with the Metropolitan Cycling Strategy.
- 7.4.5. Thus, it is clear that the development plan objectives for the area have a much wider remit in terms of the identified need to enhance the local road network, facilitate public transport, improve pedestrian and cycle facilities and generally facilitate more sustainable development patterns. It is considered that without the proposed development, there is likely to be a range of road/footpath improvement works that would be required to achieve these objectives, such as the resolution of the pinch point to the north of the site, which was not specified in the special contribution condition. Thus, I do not agree that that the requirement to pay a special contribution, in addition to a contribution under the GDCS, amounts to double charging.

7.5. Precedents

- 7.5.1. The appellant raised the matter of the previous permission on the site, which did not attract a special development contribution, and a number of previous decisions by the board, which it was considered supported its case. In terms of the previous permission on site, **Ref. 06/4316**, the planning and technical reports on file indicate that the sightline requirements at that time were quite different to those currently required under DMURS, which would have had implications for the siting of the entrance, the zebra crossing and hence the footpaths associated with these items. It is also quite likely that the emphasis in policy formulation on sustainable development patterns, including walking and cycling, the need to reduce traffic congestion, creation of safe/walkable neighbourhoods which are permeable, etc. would not have been as developed as it is today. Hence, the current policy objectives for the area would place a greater emphasis on ensure safe pedestrian routes were established as part of a residential development such as this.
- 7.5.2. **PL04.234024** – as mentioned previously, it is considered that this reference was made in error and that the appellant had intended to refer to **ABP 300056-17** instead. This development was for 200 residential units at Maryborough Ridge. The special contribution condition in this case related to the provision of Recreation, open space, including Ballybrack Cycle Path. The Board agreed with the Inspector's conclusions that although there was an identified shortfall in the provision of recreational amenities to serve the proposed development, the P.A. had failed to demonstrate that there are specific or exceptional costs in terms of the provision of recreation and amenities facilities arising from the proposed development that would benefit the proposed development. It would appear that the evidence had indicated that the proposed cycle path would be of very little amenity use to the future residents of the scheme, particularly due to its relatively remote location. It is considered that this case differs from the current case as the works in question would directly benefit the future residents of the scheme.
- 7.5.3. **PL04.232465** – as mentioned previously, it is considered that this reference was also made in error and that the appellant had intended to refer to **PL04.232458** instead. This development was for a business park comprising 4 buildings at Wallingstown, Little Island. The special contribution condition related to three specific items of

improvements to the road network. These were the Dunkettle Interchange, the Little Island Interchange and the Island Junction Improvement Report. The appellant has pointed out that the Inspector had considered that the items did not come within the scope of Section 48(2)(c) and had recommended that the condition be omitted. The Inspector had considered that the charge did not constitute a specific exceptional cost in relation to this particular development and that it applies to a wide geographical area, which could more properly be dealt with under a revised GDCS or a supplementary scheme.

7.5.4. However, I note that the Board disagreed with the Inspector in this instance. The Board considered that the upgrades to the road system were warranted, would benefit the proposed development and that the principle of the special contribution was upheld in this instance. The Board direction states that in disagreeing with the Inspector, the Board considered that the traffic the proposed development would generate would impact on the road system and that the development should contribute accordingly. It is considered that the current case is similar to this case in terms of the direct benefits to the future residents and in that the proposed development would generate additional demand and introduce changes to the local infrastructure which would need to be addressed.

7.5.5. **PL04.242829** – this development was for the construction of 2 office blocks at Sarsfield Road, Doughcloyne. The special contribution condition related to the provision of necessary road improvement works on Sarsfield Road, from Doughcloyne Junction to the Wilton end of this site, which will include road alignment improvement works, junction improvement works, planning existing surface, surfacing in macadam and stone, lining, drainage, alteration of existing services etc. in this case the Board generally agreed with the Inspector's conclusions that firstly, the works constituted road improvement works that were specific to the proposed development, but secondly, that the imposition of a further condition requiring the developer to assume responsibility for the design and construction, at his own expense, of all works relating to the new road infrastructure and all variations / re-alignments to the existing public road network as submitted in the application documentation, which would constitute duplication. It was therefore considered that the special contribution condition would amount to double charging. As discussed

previously, it is considered that this issue does not arise in the case currently before the Board.

8.0 Recommendation

8.1. Having regard to the information on the file, the grounds of appeal, the planning and technical reports of the planning authority in relation to the development, and to the assessment above, I recommend that the Board directs the planning authority to **ATTACH** Condition 42 and the reason therefor as follows for the reasons and considerations set out below.

35. The developer shall pay the sum of €80,000.00 (eighty thousand euro) (updated at the time of payment in accordance with changes in the Wholesale Price – 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 works proposed to be carried out relating to the modification of the public footpath opposite the applicant's site, the modification of the existing zebra crossing and associated road markings in addition to road pavement improvements required to facilitate this development. This contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority might 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 benefit the proposed development.

9.0 Reasons and Considerations

It is considered that the planning authority has demonstrated that the modifications to the footpath opposite the site and to the existing zebra crossing and associated road markings, and the road pavement improvements arise from the proposed changes to the layout of the road and pedestrian network adjacent to the site, which would also

give rise to additional demands on the road and pedestrian infrastructure serving the site, which would amount to specific exceptional costs arising from the proposed development that would benefit the proposed development in this instance.

Mary Kennelly
Senior Planning Inspector

9th November 2018